Supreme Court, U.S.
FILED
NOV 14 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

— 78-1888 —

EDWARD W. MAHER, COMMISSIONER OF
INCOME MAINTENANCE,
STATE OF CONNECTICUT,

Petitioner,

v.

VIRGINIA GAGNE, INDIVIDUALLY AND
ON BEHALF OF OTHERS SIMILARLY SITUATED,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 21, 1979
CERTIORARI GRANTED OCTOBER 1, 1979

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(Note: The opinion and the judgment of the Court of Appeals have already been printed as appendices to the petition for certiorari and may be found at pages 1a and 19a thereof, respectively.)

1.

RELEVANT DOCKET ENTRIES

GAGNE v. MAHER

HONORABLE T. EMMET CLARIE

United States District Court

1/3/75
Complaint, filed.

1/28/75
Answer filed.

1/30/75
Defendants Interrogatories to the Plaintiff.

3/4/75
Answers to Interrogatories.

4/4/75
Motion for Leave to Take Depositions by Means of a tape recorder, and Stipulation ordered accordingsly, Markowski, C.m 4/7/75. Copies mailed.

4/14/75
Notice of Deposition (Re: C. Packard 4/21/75).

5/9/75
Interrogatories to Defendants, filed.

6/2/75
Motion to Intervene as a Plaintiff filed by Betty Spain.

7/10/75
Defendants Answer to Interrogatories to Defendants.

9/30/75
Complaint of Betty Spain filed.

10/7/75
Notice of Dismissal by Pltf. Betty Spain.

12/3/75
Notice of Changes in Deposition (Caroline Packard).

12/3/75
Deposition of Caroline E. Packard.

12/29/75
Interrogatories to Defendants.

1/29/76
Suggestion that Successor in Office be Substituted by Pltf.

2/6/76
Answers to Interrogatories filed, by deft.

3/2/76
Defendant's Supplemental Answer to Interrogatories.

4/19/76
Supplemental Answers to Interrogatories filed by def.

9/21/76
Motion for Leave to Amend Complaint.

10/20/76
Answer to Amended Complaint.

12/8/76
Request for Admission filed by Pltf.
Interrogatories to Defendants.

1/24/77
Motion for Certification of Class.

3/2/77
Consent Decree, Clarie, J. m.3/2/77. Copies mailed.

4/4/77
Motion for Attorney's Fees, filed by pltfs.

4/21/77
Defendant's Motion in Opposition to the Plaintiff's Motion for Award of Attorney's Fees-Summary of Defendant's Argument.

5/16/77
Hearing on pltf. motion for atty. fees. Dec. Res. Pltf. Supplement. Affidavit of Joan Silver filed, make Exh. 1, Affidavit of David Shaw filed, made Exh. D-1, Exh. D,E,G,F.

10/11/77
Court Reporter's notes of proceedings held on May 16, 1977, filed on Hartford (Sperber, R.).

8/1/78
RULING on Motion for Attorneys' Fees-GRANTED in amount of $3,012.19 Clarie, J. m.8/2/78. Copies mailed.

8/8/78
Notice of Appeal, filed by Def.

8/8/78
Supersedeas Bond, filed by Def.

8/18/78
Notice of Cross Appeal filed by plaintiff. Copies to counsel. Certified copies of appeal and docket entries mailed to U.S. Court of Appeal and New Haven. Civil Management Plan and Forms C & D mailed to Atty Pilver.

2.

United States District Court

District of Connecticut

VIRGINIA GAGNE, individually
and in behalf of all other
persons similarly situated,

PLAINTIFF;

vs. CIVIL ACTION NO.
H 75 1

NICHOLAS NORTON, Commissioner
of Welfare, State of Connecticut,

HENRY BOYLE, Acting Deputy
Commissioner of Welfare, State
of Connecticut,

DEFENDANTS.

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff, individually and on behalf of all persons similarly situated, seeks injunctive and declaratory relief with regard to certain state regulations which are being applied by the defendants in a way that deprives plaintiff of benefits secured to her by the incentive earnings portion to the Aid to Families with Dependent Children provisions of the Social Security Act (42 U.S.C. sec. 601 et. seq.). The plaintiff, a full-time employee of the Bass Plating Company, Bloomfield, Connecticut, wishes to have her expenses, reasonably attributable to the production of income, fully considered in computing her AFDC award under the incentive earnings program. Defendants, pursuant to State policy set forth at Connecticut Welfare Manual, Volume I, Chapter III, Index 332.31 (effective 9-15-73) (see exhibit A

attached and incorporated herein as if fully pleaded) limit work-related expenses by setting maximum food and transportation expense allowances for certain AFDC recipients.

2. The deprivation complained of is caused by defendants' failure to consider all of plaintiff's reasonable work-related expenses in computing her monthly AFDC award. The plaintiff challenges defendants' regulations located at Volume I, Chapter III, Index 332.31 of the Welfare Manual on the grounds that they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and conflict with the Social Security Act and the regulations promulgated pursuant to it.

II. JURISDICTION

3. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. sections 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments, and by 42 U.S.C. section 1983, which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and law of the United States.

4. Jurisdiction is conferred on this Court by 28 U.S.C. section 1343.

III. THREE-JUDGE COURT

5. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. sections 2281, 2284 since plaintiff seeks an injunction to restrain defendants, who are state officers, from the enforcement, operation and execution of a state regulation (Connecticut Welfare Manual Vol. I, Chap. III, Index 332.31) of state-wide applicability on the ground that said statute is contrary to the Constitution of the United States and the Social Security Act.

IV. PLAINTIFF

6. Plaintiff Virginia Gagne is a citizen of the United States and of the State of Connecticut, and a resident of the Town of Bloomfield, Connecticut.

V. DEFENDANTS

7. Defendant Nicholas J. Norton is the Commissioner of Welfare of the State of Connecticut and is entrusted under section 17-3a of the Connecticut General Statutes with the responsibility for the promulgation of rules and regulations for the operation of town assistance and for the supervision of this program.

8. Defendant Henry Boyle is the acting Deputy Commissioner of Welfare of the State of Connecticut and as such is second in charge of the operation and administration of all programs under the jurisdiction of the State Welfare Department.

VI. CLASS ACTION

9. The named plaintiff brings this action in her own behalf and, pursuant to the Federal Rules of Civil Procedure 23a and (b)(2), on behalf of all other persons similarly situated. The members of the class similarly situated are all AFDC recipients in the State of Connecticut whose expenses reasonably attributable to the earning of income are not fully considered in computing their AFDC grant. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VII. FACTS

10. Plaintiff, Virginia Gagne, is a resident of Bloomfield, Connecticut and the mother of four children. She supports herself and her children with income earned at the Bass Plating Co., Bloomfield, Connecticut and incentive earning payments under the Aid to Families with Dependent Children (AFDC) program administered by the State Welfare Department.

11. Virginia Gagne's earned income is reported to and fully taken into consideration by the State Welfare Department in computing her AFDC award.

12. Mrs. Gagne has found it necessary to purchase and maintain a 1963 Ford Fairlaine automobile as a means of travelling to and from work (round trip — 8.4 miles) because public transportation between her home and the Bass Plating Company is inaccessable.

13. The Bass Plating Company allows employees a one-half hour lunch and fifteen minute coffee breaks.

14. Time restrictions and the location of alternative eating establishments (commercial food establishment closest to the Bass Plating Company is approximately three miles away) make it extremely difficult for the plaintiff to purchase work-related food at any location other than her employer's place of business.

15. On August 19, 1974, the plaintiff, through her attorney, represented to her worker that many of her work-related expenses including food and transportation costs were being either improperly excluded from or not fully considered in her incentive earnings computations.

16. Mrs. Gagne was told that certain of the exclusions were improper but that transportation and food allowances were fixed by departmental policy and could not be changed.

17. Plaintiff, aggrieved by this decision to limit her work-related food and transportation allowances to $.50 per day and $.06 per mile respectively and to refuse to consider work-related clothing expenses in computing her AFDC award, requested a Fair Hearing.

18. During negotiations preceeding the September 24, 1974 Fair Hearing, plaintiff renewed her demand that her reasonable work-related transportation and food expenses be fully deducted in her AFDC award computations.

19. The fair hearing liason worker, although willing to make certain changes in Mrs. Gagne's allowable expenses, stated that she could not allow food and transportation expenses exceeding the standards prescribed in Index 332.31, regardless of a recipient's circumstances.

20. It was established at the September 24, 1974 Fair Hearing that is costs Virginia Gagne at least 13.9 cents per mile to operate her automobile for work purposes. The fair hearing officer, using a twelve cents per mile figure, computed her monthly transportation costs to be $21.84 (182 miles times $.12 per mile) — exactly double that allowed by defendants' policy.

21. It was also established at the hearing that plaintiff's reasonable work-related food expenditures are $1.65 per day or $35.75 monthly — more than three times the defendants' monthly lunch allowance.

22. Because of the special circumstances of plaintiff's employment, it would be impossible to obtain transportation or to purchase food reasonably necessary for work for the amounts specified in Index 332.31

23. The fair hearing officer found (see exhibit B attached and incorporated herein as if fully pleaded) that although plaintiff's transportation and food costs greatly exceeded defendants' allowances, the agency was correct in adhering to its policy. No reasons were given for his decision in this regard.

24. On November 26, 1974, the plaintiff's attorney wrote a letter to Henry Boyle, Deputy Commissioner of Welfare, with a copy to Assistant Attorney General Francis MacGregor in an attempt to resolve this dispute (see exhibit C attached and incorporated herein as if fully pleaded). No response to this inquiry has been received.

VIII. FIRST COUNT

25. Paragraphs 1-24 of the complaint are hereby incorporated by reference the same as if fully pleaded.

26. The defendants' regulations at Connecticut State Welfare Manual, Index 332.31 create two classes of working AFDC recipients: one class consists of those recipients whose expenses reasonably attributable to the production of income are fully considered in computing their AFDC grants and the other class consists of recipients whose work-related expenses are not fully considered in computing their AFDC award.

27. These two classes are indistinguishable in light of the purposes of the work expense disregard provisions of the AFDC program — namely, to provide a work incentive for AFDC recipients.

28. Defendants' practice and policy constitute an invidious discrimination against persons whose work-related expenses exceed the allowances set forth in Index 332.31 and violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by forbidding plaintiff and the class she represents ever from controverting the presumption that their work-related expenses exceeding the transportation and food allowances of Index 332.31 are reasonable.

IX. SECOND COUNT

29. Paragraphs 1-28 of the complaint are hereby incorporated by reference the same as if fully pleaded.

30. Despite plaintiff's representations to her worker and subsequently, during negotiations before her September 24, 1974 Fair Hearing, to the Fair Hearings Liason, that special circumstances rendered the Department's transportation and food allowances wholly inadequate and unreasonable in light of her actual work-related expenses, she was told that Departmental Policy required strict adherence to expense guidelines.

31. Although the fair hearing officer found the plaintiff's actual work-related transportation costs to be more than double and her food costs to be more than triple the allowances prescribed by Index 332.31, departmental policy was strictly followed without articulating any reasons therefor.

32. Defendants' practice and policy violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that:

a) Defendants' practice and policy establish an irrebutable presumption that the plaintiff's work-related transportation and lunch allowances are unreasonable and operate to deny plaintiff and the class she represents a fair opportunity to rebut it.

b) The standard lunch and transportation allowances contained in Index 332.31 are arbitrary in that they were not developed by a statistically fair averaging, nor do they reflect current prices.

X. THIRD COUNT

33. Paragraphs 1-32 are incorporated by reference, the same as if fully pleaded.

34. Section 402(a)(7) of the Social Security Act (42 U.S.C.) section 602(a)(7) requires state plans thereunder to provide that, in determining the need for assistance of a recipient, the state agency shall take into consideration any income of such individuals "as well as any expenses reasonable attributable to the earning of any such income".

35. Thus, state agencies are required, in computing individual welfare grants, to disregard from earned income those expenses that can reasonably be termed work-related. 45 C.F.R. sections 233.20(a)(3)(iv)(a).

36. Connecticut General Statutes section 17-83 authorizes the Commissioner of Welfare to make necessary regulations including any regulations necessary for receiving grants from the federal government.

37. Connecticut Welfare Regulations Manual, Vol. I, Chap. III, Index 332.31 establishes maximum lunch and transportation expense allowances for certain AFDC recipients.

38. Recipients are given no meaningful opportunity to show that the established maxima are unreasonable in light of special circumstances relating to their employment.

39. The state regulation (Index 332.31) as administered by Connecticut, by failing to take into consideration all of plaintiff's expenses reasonably attributable to the production of income, conflicts with the federal statutes and regulations and, therefore, violates the Supremacy Clause of the United States Constitution.

XI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully requests in her own behalf, and in behalf of all those similarly situated, that this Court:

1. Assume jurisdiction of this cause, convene a three-judge district court pursuant to 28 U.S.C. sections 2281 and 2284 to determine this controversy, and set this case down promptly for a hearing.

2. Determine by order, pursuant to Rule 23(c)(l) of the Federal Rules of Civil Procedure, that this action be maintained

as a class action.

3. Enter a final judgment pursuant to 28 U.S.C. sections 2201 and 2202 and Rule 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that defendants' regulation contained at Vol. I, Chap. III, Index 332.31 of Connecticut's Welfare Manual invalid as inconsistent with 42 U.S.C. section 602(a)(7) and 45 C.F.R. section 233.20(a)(3)(iv)(a) and, therefore, violative of the Supremacy Clause of the United States Constitution.

4. Enter a final judgment pursuant to 28 U.S.C. sections 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that the Connecticut Regulations found at Volume I, Chapter III, Index 332.31 are invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

5. Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from refusing to consider any of plaintiff's or her class's expenses reasonably attributable to the production of income in computing their AFDC awards.

6. Order the defendants, their successors in office, agents and employees, to notify promptly by first class mail at their last known address all persons who have been denied AFDC benefits because of the provisions and interpretations of state and federal law enjoined herein that they are now eligible for such benefits and may reapply.

7. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiff her costs herein, and also grant her and all persons similarly situated such additional or alternative

relief including payment of all monies wrongfully withheld, as may seem to this Court to be just, proper and equitable.

Dated at Hartford, Connecticut this 30th day of December 1974.

RESPECTFULLY SUBMITTED

By: DAVID C. SHAW
Legal Aid Society of Hartford County, Inc.
525 Main Street
Hartford, Connecticut 06103
Tel. (203) 566-6360

Attorney for Plaintiff

3.

United States District Court
District of Connecticut

CONNECTICUT
STATE WELFARE DEPARTMENT
PUBLIC ASSISTANCE
HARTFORD

In Re: Request of Virginia Gagne
45 Hillside Avenue
Bloomfield, Connecticut
Case No. 11-C-800558

For fair hearing because of amount of reduction in award.

November 20, 1974

Present: Mrs. Virginia Gagne, Apellant; Atty. David Shaw, Appellant's
Representative; Mrs. Daphne Walker, Fair Hearing Liaison;
Mr. William Kane, Fair Hearing Officer.

MEMORANDUM OF DECISION

Mrs. Gagne, of Bloomfield, Connecticut, also referred to as the appellant, was aggrieved because of amount of reduction in the award and made request for a fair hearing as outlined in Sections 17-2a and 17-2b of Connecticut General Statutes by means of a letter dated August 16, 1974.

Pursuant to said request, a fair hearing was held before the undersigned, at the Hartford District Office of the State Welfare Department, on September 24, 1974, of which due notice had been given and at which hearing the appellant was present and the case was fully heard. The right to appeal the hearing decision within thirty days to the Circuit Court was made known.

A: FOR THE STATE WELFARE DEPARTMENT

The appellant is active on the AFDC incentive earnings program. The appellant's son is also employed full time as well as being a full time student. The district office does not reflect any of his income nor do they allow him any exemptions for work expenses. The appellant is aggrieved with the agency's determination that they do not allow her son the work expenses.

B: FOR THE APPELLANT

The appellant's representative stated that since 9/73 the agency has not properly computed the employment expenses of the appellant and her son. The son has not been allowed any expenses such as transportation for employment and clothing essential to employment. The cost of transportation is monthly, approximately $21.84 and clothing is $3.78 monthly for special work gloves. The appellant herself spends about $35.75 monthly on lunches. The appellant travels approximately 182 miles monthly for work at a cost of 12 to 14 cents per mile. The appellant's representative stated the federal regulations require that actual work expenses be allowed and that the State cannot boose arbitiary [sic] limits. Also the appellant's representative noted the income disregard policy is separate and distinct from the incentive earning policy.

C: PERTINENT LAW

Section 17-82d of the Connecticut General Statutes provides the regulation which authorizes the Commissioner of Welfare to administer the AFDC program and to grant assistance in order to support a family in health and decency.

D: PERTINENT AGENCY POLICY

Volume 1, Chapter III, Index 332 and following provides the policy regarding the treatment of income for those persons in receipt of public assistance.

E: FINDING OF FACT

1. The appellant is employed and a recipient of AFDC. The appellant is therefore entitled to be on the AFDC incentive earning program.

2. The appellant's son is active on AFDC and is a full time student in high school.

3. The appellant is requesting allowance for actual lunch and work clothes expenses as well as transportation.

4. The appellant is requesting that the actual transportation cost and clothing costs of her son also be allowed.

F: CONCLUSION

Expenses of employment are allowed as proper deductions from gross income but are not items of need for which the agency supplements. The agency is also correct in allowing $.50 daily for lunches and $.06 per mile for transportation. The district should also allow the appellant a deduction for work clothing that is necessary for the job. This allowance can not be given to the appellant's son.

G: DECISION

The district is directed to assess the actual needs of the appellant's work connected clothing expenses and to allow those as actual expenses. The district is upheld in the amount allowed the appellant for lunches, transportation and the mandatory deductions. The district is also upheld in not allowing the appellant's son any work expenses.

MR. WILLIAM KANE
Official designated to hold
Fair Hearings

WK:gp
cc: Serge Tetera
Act. District Director
D.O. #1
Hartford

ATTY. DAVID SHAW

4.

United States District Court
District of Connecticut

(TITLE OMITTED IN PRINTING)

ANSWER

1. So much of paragraph 1 of the plaintiff's complaint as alleges that state regulations are being applied so as to deny the plaintiff of benefits secured to her by the incentive earnings portion of the Aid to Families with Dependent Children provisions of the Social Security Act is denied; as to the remainder of paragraph 1, the defendant has insufficient information to form a belief.

2. Paragraphs 2, 3, 4, and 5 of the plaintiff's complaint are denied.

3. As to paragraph 6 of the plaintiff's complaint, the defendant has insufficient information to form a belief.

4. Paragraphs 7 and 8 of the plaintiff's complaint are admitted, as of the date of the complaint.

5. Paragraph 9 of the plaintiff's complaint is denied.

6. As to paragraphs 10, 11, 12, 13, 14, 15 and 16 of the plaintiff's complaint, the defendant has insufficient information to form a belief.

7. As to paragraph 17 of the complaint, that part of paragraphs 17 that alleges that the plaintiff is aggrieved is denied; that part of paragraph 17 that alleges that the plaintiff requested a fair hearing is admitted.

8. As to paragraphs 18, 19, 20, 21, 22 and 23 of the complaint, the defendant has insufficient information to form a belief.

9. As to paragraph 24 of the complaint, so much as alleges that the plaintiff's attorney wrote to Deputy Commissioner is admitted; as to the remainder of paragraph 24, the defendant has insufficient information to form a belief.

10. As to paragraph 25 of the complaint, the defendant hereby incorporates the answers to paragraphs 1 - 24 by reference.

11. Paragraphs 26, 27 and 28 of the complaint are denied.

12. As to paragraph 29 of the complaint, the defendant hereby incorporates the answers to paragraphs 1 - 28 by reference.

13. As to paragraph 30 of the complaint, the plaintiff has insufficient information to form a belief.

14. As to paragraph 31 of the complaint, the defendant has insufficient information to form a belief.

15. Paragraph 32 of the complaint is denied.

16. As to paragraph 33 of the complaint, the defendant incorporates the answers to paragraphs 1 - 32 by reference.

17. Paragraphs 34, 35, 36 and 37 set forth conclusions of law and not allegations of fact and therefore no answer is necessary but insofar as an answer may be required, defendant denies each and every allegation of fact and conclusion of law that may be contained therein.

18. Paragraphs 38 and 39 of the complaint are denied.

19. All allegations not expressly herein before admitted, denied, or modified are denied.

FIRST DEFENSE

1. The plaintiff has failed to state a cause of action, due to the failure to allege facts giving rise to a constitutional issue sufficiently substantial to vest jurisdiction under 28 U.S.C. § 1343 (3).

2. Because there are no substantial constitutional issues, this court does not have jurisdiction, because the amount in controversy is not $10,000.00 or more, as required by 28 U.S.C. § 1331.

DEFENDANTS

BY THEIR ATTORNEY

CARL R. AJELLO
Attorney General

By: EDMUND C. WALSH
Assistant Attorney General
90 Brainard Road
Hartford, Connecticut 06114
Tel: 566-7014

(CERTIFICATION OF SERVICE OMITTED)

5.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

ANSWERS TO INTERROGATORIES

1. State the name and address of your present employer.

ANSWER: The Bass Plating Company, 32 Old Windsor Road, Bloomfield, Connecticut.

2. How long have you been employed at your present place of employment?

ANSWER: Since September of 1973.

3. How many hours a week do you work?

ANSWER: Work week varies between approximate limits of sixty-three hours and forty hours.

4. What are the hours of your employment?

ANSWER: Workday hours vary; approximate hours - 7:30 a.m. to 5:00 p.m.

5. What is the shortest direct distance from your home to your job?

ANSWER: 4.2 miles

6. How was the distance in your answer to Question 5 determined?

ANSWER: Automobile odometer reading taken along most direct route.

7. What was your total income, from all sources, for each of the following months?

		Gross Earned Income
ANSWER:	a) July, 1974	$607.87
	b) August, 1974	672.14
	c) September, 1974	633.61
	d) October, 1974	557.18
	e) November, 1974	675.13
	f) December, 1974	558.13
	g) January, 1975	738.04

My monthly AFDC incentive earnings payments have changed repeatedly, particularly since a fair hearing was requested regarding my incentive earning payments. For this reason I believe that I cannot accurately list my incentive earning payments during the period specified with the information at my disposal.

8. Were you a recipient of food stamps for any or all of the periods listed in Question 7? If so, state the amount of money you paid for the food stamps for each of the months listed in Question 7, and the total value of the food stamps received for each month.

ANSWER: No.

9. Does your present employer forbid you to bring your own lunch to work?

ANSWER: No.

10. Do you bring your own lunch to work?

ANSWER: On rare occasion.

11. If your answer to Question 10 is "no", what is your reason for not bringing your own lunch to work?

ANSWER: Irregular working hours make it difficult to anticipate food needs in advance.

12. Explain in detail how you arrived at the figure of $1.65 per day as your reasonable work-related food expenditures in Paragraph 21 of the complaint.

ANSWER: a) Lunch: sandwich — $.95 per day
Coffee — .25 per day

b) Snack breaks: donuts — $.20 per day
Coffee — .25 per day

Total — $1.65 per day

13. Explain in detail how you arrived at the figure 13.9 cents per mile as the cost of operating your automobile for work purposes.

ANSWER: a. Work related transportation - 8.4 miles per day.
b. Cost of gasoline 8 50c per gallon
c. Gasoline consumption - 13 miles per gallon
d. Cost of oil - $1.10 per quart
e. Oil usage - 1 quart every 200 miles
f. Insurance costs - $157.00 per year
g. Lubrication and oil change - $5.40
h. Frequency of lubrication and oil change - every 1000 work miles
i. Tune-up costs - $25.00
j. Frequency of tune-ups - once per year
k. Work miles per year - 2,016 miles

Gasoline cost (b divided by c) ... $.0384/mile
Insurance cost (f divided by k) .... .0778/mile
Lubrication and oil change cost (g divided by h) ..... .0054/mile
Oil cost (d divided by e) ..... .0055/mile
Tune-up cost (i divided by k) ..... .0124/mile

Totals ..... $.1395/mile

14. What is the make and model of your automobile?

ANSWER: 1963 Ford Fairlane

15. State in miles the total amount of travel for which your automobile was used for each of the following months: July, 1974 through January, 1975.

ANSWER: Plaintiff has insufficient information to answer this interrogatory.

16. Do you carry insurance on your automobile?

ANSWER: Yes.

17. What is the cost of this insurance?

ANSWER: $155.00 for the period 12/15/74 - 12/15/75.

18. If the answer to Question 16 is "yes", state the name and address of your insurer, the policy number, and the date the policy became effective.

ANSWER: Name and address of insurer
The Hartford Accident and Indemnity Company
Hartford Plaza, Hartford, Connecticut

Policy Number -02GA890254

Date policy became effective - 12/15/74

19. If your answer to Question 16 is in the affirmative, are there any other vehicles insured under this policy?

ANSWER: No.

20. Are there any other automobiles owned, rented or otherwise available to other members of your household?

ANSWER: Yes.

21. If the answer to Question 20 is in the affirmative, describe any such vehicles.

ANSWER: 1968 Oldsmobile Cutlass

22. Have you at any time since July 1, 1974, been employed by anyone other than the Bass Plating Company of Bloomfield? If so, state the name(s) and address(es) of such employer(s) and the period(s) of time during which you were so employed.

ANSWER: No.

23. State the total number of persons living in your household, and the names and relationship of each such person.

ANSWER: Six persons.
Virginia Gagne
James Gagne - Son
Valerie Gagne - Daughter
Scott Gagne - Son
Randall Gagne - Son
Nellie Buck - Mother

24. Are all the members of your household included in your AFDC award?

ANSWER: No.

25. When did you purchase the automobile you presently own?

ANSWER: November 27, 1972

26. What was the mileage reading on your automobile's odometer at the time you purchased it; what is the mileage reading at the present time?

ANSWER: Odometer reading at the time of purchase unknown. Odometer reading now, 37,227.

27. From whom did you purchase said automobile?

ANSWER: Richard A. Gracia

28. What was the purchase price of said automobile?

ANSWER: Precise purchase price is unknown.
Approximate amount $50-$60.

29. What monthly amount of money do you claim was wrongfully disallowed by defendant as a work-related *transportation* expense, and for which months do you make such a claim?

ANSWER: I claim that $24.07 per month minus the monthly transportation expense allowances actually awarded plaintiff since September, 1973 have been wrongfully withheld.

30. What monthly amount of money do you claim was wrongfully disallowed by defendant as a work-related *food* expense, and for which months do you make such a claim?

ANSWER: I claim that $39.74 per month minus the actual monthly lunch allowances actually awarded plaintiff since September, 1973 have been wrongfully withheld.

31. Describe in detail how the amounts given in answer to Questions 29 and 30 were computed.

ANSWER: Interrogatory 29:

a. 2423 work miles per year
b. 634 non-work miles per year
c. 3062 total miles per year
d. Insurance cost - $157 per year
e. Gasoline cost - 50c per gallon
f. Gasoline consumption rate - 13 miles per gallon
g. Oil cost - $1.10 per quart
h. Oil consumption rate - one quart every 200 miles
i. Lubrication and oil change costs - $8.38

j. Frequency of lubrication and oil changes - every 1,000 miles

k. Tune-up cost - $36.00

l. Frequency of tune-ups - once per year - (every 3,062 miles)

m. Tire cost ..... $22.00 each
Federal tax ..... 2.41 each
Valve ..... .75 each
Balancing ..... 1.50 each
Sales tax ..... 1.32 each
Total ..... 27.98 each

n. Tire life - 30,000 miles

Gasoline cost - (e divided by f) ..... $.038 per mile
Insurance cost - (d divided by c) ..... .051 per mile
Oil cost - (g divided by h) ..... .006 per mile
Lubrication and oil cost -
(i divided by j) ..... .008 per mile
Tune-up cost - (k divided by c) ..... .012 per mile
Tire cost - (4m divided by n) ..... .004 per mile
Total ..... $.119 per mile

$$\frac{\$.119}{\text{Mile}} \times \frac{2423 \text{ work mi.}}{\text{year}} = \frac{\$288.93 \text{ work cost}}{\text{year}}$$

$$\$288.93 \frac{\text{work cost}}{\text{year}} \times \frac{1}{12 \frac{\text{mos.}}{\text{yr.}}} = \$24.07 \frac{\text{work cost}}{\text{mo.}}$$

31. ANSWER: Interrogatory 30:

$$\$1.65 \text{ per day} \times 289 \frac{\text{working days}}{\text{year}}$$

$$\$1.65 \text{ per day} \times 289 \frac{\text{working days}}{\text{year}} = \$476.85/\text{year}$$

$$\frac{\$476.85}{(1) \text{ yr.}} \times \frac{1}{\frac{12 \text{ mos.}}{(1) \text{ yr.}}} = \$39.74 \text{ per month}$$

32. Paragraph 26 of the complaint alleges that the defendant's regulations create two classes of working AFDC recipients.

a) Define with as much precision as you can the class of working AFDC recipients whose expenses, reasonably attributable to the production of income are allegedly fully considered in computing their AFDC grants;

ANSWER: SEE ATTACHED OBJECTION

b) Define with as much precision as you can the class of working AFDC recipients whose expenses are *not* reasonably attributable to the production of income are allegedly fully considered in computing their AFDC grants.

ANSWER: Plaintiff is unaware of any instance where expenses *not* reasonably attributable to the production of income are fully considered by defendants in computing an AFDC recipient's incentive earnings award. We do not allege that any class of such recipients exists.

VIRGINIA GAGNE

(JURAT AND CERTIFICATION OF SERVICE OMITTED)

6.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

DEFENDANTS ANSWER TO INTERROGATORIES TO DEFENDANTS

The defendants hereby reply to the plaintiff's Interrogatories as follows:

1. *QUESTION:* Is it the policy of the Welfare Department of the State of Connecticut (hereinafter — Department) to allow working AFDC recipients a deduction from their gross earnings, less appropriate income disregard, equivalent to all their reasonable work-related expenses, in computing their AFDC incentive earnings award?

ANSWER: This is done in accordance with policy found in Manual Vol. I, Chapter III, 332.32, page 2, B., C. and D.

2. *QUESTION:* Is it the practice of the Department to allow working AFDC recipients a deduction from their gross earnings, less appropriate income disregard, equivalent to all their reasonable work-related expenses, in computing their AFDC incentive earnings award?

ANSWER: In practice, the income disregard is allowed less the appropriate employment expenses as spelled out in the above policy.

3. *QUESTION:* What procedure have intake and redetermination workers been instructed to follow in implementing the policies and practicing referred to in paragraphs 1 and 2 above?

ANSWER: All intake and redetermination workers have been instructed to follow all welfare policies accurately including the incentive earnings policy.

4. *QUESTION:* What procedures have intake and redetermination worker supervisors been instructed to follow in implementing the policies and practices referred to in paragraphs 1 and 2 above?

ANSWER: Supervisors have been instructed to follow all welfare policies carefully and they understand that no exceptions are to be made without special approval from appropriate central office personnel.

5. *QUESTION:* Please identify and summarize the contents of each and every document, memorandum or other writing of any kind which contains any instructions or articulates any policy which relates in any way to the incentive earnings program.

ANSWER: See attached Manual Vol. I, Chapter III, Index 332.3 — 332.31 (Appendix A)

6. *QUESTION:* Please give the name and address of the custodian of each and every document identified in your response to interrogatory 5.

ANSWER: Caroline Packard, 110 Bartholomew Avenue, Hartford.

7. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances pursuant to Connecticut State Welfare Manual, Chapter III, Index 332.31 which became effective on September 5, 1973 (hereinafter index 332.31)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

8. *QUESTION:* How many working AFDC recipients are presently given the work-related transportation expense allowance identified by index 332.31 (2) (b) (1)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

9. *QUESTON:* How many working AFDC recipients are presently given the work-related transportation expense allowance identified by index 332.31 (2) (b) (2)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

10. *QUESTION:* How many working AFDC recipients are presently given the work-related transportation expenses allowance identified by index 332.31 (2) (b) (3)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

11. *QUESTION:* How many working AFDC recipients presently receive work-related transportation allowances greater than the one specified in index 332.31 (2) (b) (2)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

12. *QUESTION:* How many working AFDC recipients presently receive work-related transportation allowances less than the one specified in index 332.31 (2) (b) (2)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

13. *QUESTION:* How many working AFDC recipients are presently given work-related transportation allowances less than the one specified in index 332.31 (2) (b) (3)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

14. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances less than the one specified in index 332.31 (2) (b) (3)?

ANSWER: There is no way of obtaining this information. This information is not put into the computer and it is not administratively possible to go through 38,493 cases to obtain this information at this time.

15. *QUESTION:* Does the Welfare Department set any standard work-related transportation allowances for recipients who use public conveyances?

ANSWER: There is no standard transportation allowance for recipients using public conveyances to employment. The actual cost is the figure used. This occassionally includes taxi fares when the recipient is working a shift or weekends when regular public transportation is not available.

16. *QUESTION:* If interrogatory #15 is answered affirmatively, please identify such transportation allowance(s).

ANSWER: See Answer #15.

17. *QUESTION:* If interrogatory #15 is answered affirmatively, are reasonable work-related transportation expense allowances exceeding such standards awarded?

ANSWER: Since the actual cost of transportation is provided, there would be no expenses exceeding the amount charged.

18. *QUESTION:* How many working AFDC recipients who use public conveyances for work transportation are presently given work-related transportation expense allowances greater than the standard allowance identified in your response to interrogatory #16?

ANSWER: There is no way of knowing, but there should be no need for any allowance greater than the standard charge since it is actual cost.

19. *QUESTION:* How many working AFDC recipients who use public conveyances for work transportation are presently given work-related transportation expense allowances less than the standard allowances identified in your response to interrogatory #16?

ANSWER: None to my knowledge.

20. *QUESTION:* Does the Welfare Department always allow the actual cost of necessary work-related public transportation as a work-related expense?

ANSWER: Yes.

21. *QUESTION:* How many working AFDC recipients are presently given the work-related lunch expense allowance identified by index 332.31 (2) (a) (1)?

ANSWER: There is no information available. See Answer #7-14.

22. *QUESTION:* How many working AFDC recipients are presently given work-related lunch expense allowances greater than $.50 per day?

ANSWER: None to my knowledge.

23. *QUESTION:* How many working AFDC recipients are presently given work-related lunch expense allowances less than $.50 per day?

ANSWER: None to my knowledge.

24. *QUESTION:* How many working AFDC recipients are presently given work-related meal expense allowances other than the one identified by index 332.31 (2) (a) (1)?

ANSWER: None to my knowledge.

25. *QUESTION:* Please explain in detail how and when the $.50 per working day lunch allowance located at index 332.31 (2) (a) (1) was first computed and became effective.

ANSWER: This rate was set in October, 1971. In December, 1968, USDA raw food cost for an adult for lunch was $.50 to $.35 per day, depending on family size for lunch for an adult. In determining the amount to be permitted for additional expense of employment, $.50 was considered more than adequate since recipients already had the $.30 for basic food cost in their budget. The total of $.80 would permit a bag lunch plus money for coffee, or the purchase of a lunch. (See Appendix B)

26. *QUESTION:* How many working AFDC recipients are presently given the work-related clothing expense allowance specified in index 332.31 (1)?

ANSWER: There is no way of knowing. See Answer to #7 - #14.

27. *QUESTION:* Has the Welfare Department instructed workers or their supervisors to allow as work-related expenses the cost of tools, materials, uniforms and/or other *special* clothing necessary for the job only up to certain stated maxima?

ANSWER: No.

28. *QUESTON:* Has the Welfare Department delineated any standards for work-related expenses other than those standards listed at index 332.31?

ANSWER: No.

29. *QUESTION:* If interrogatory 28 is answered affirmatively, describe fully each standard and explain how such standards are applied.

ANSWER: See Answer to #28.

30. *QUESTION:* Has the Welfare Department delegated authority to any person or agency to formulate work-related expense standards?

ANSWER: No. The Welfare Commissioner sets standards.

31. *QUESTION:* If interrogatory 30 is answered affirmatively, identify to whom the authority has been delegated and the specific limits that have been placed upon such authority.

ANSWER: Mrs. J. Seckinger is occasionally consulted regarding reasonable allowances for special protective or non-streetwear clothing.

32. *QUESTION:* Does the Welfare Department allow working AFDC recipients deductions from their gross earnings less appropriate income disregards, equivalent to work-related

expenses other than those listed at index 332.31, in computing their AFDC incentive earnings awards?

ANSWER: No.

33. *QUESTION:* If interrogatory 32 is answered affirmatively, describe fully each such work-related expense allowed during the past year and the approximate date of each allowance.

ANSWER: See Answer to #32.

34. *QUESTION:* Describe fully each and every guideline that Welfare Department personnel are instructed to follow in deciding whether an administrative exception to the policy defined at index 332.31 should be requested.

ANSWER: There is no written policy regarding exceptions.

35. *QUESTION:* Please identify each and every memorandum, document or other writing, including those directed to fair hearing officials, which explain how the work expenses policies located at index 332.31 (1), (2) (b) (1), (2) (b) (2) and (2) (b) (3) are to be applied.

ANSWER: There is none to my knowledge.

36. *QUESTION:* Please give the name and address of the custodian of each and every writing identified in response to interrogatory 35.

ANSWER: Caroline Packard.

37. *QUESTION:* Please explain in detail how and when the 4½ cents per mile transportation expense allowance formerly located at Connecticut Welfare Manual, Volume I, Chapter III, Index 332.31 (2) (b) (2) and (2) (b) (3) (revised 7/26/71) were first computed and became effective.

ANSWER: Transportation Costs (See Appendix C)

4.5 per mile was provided in 1965 — covered automobile operating costs. There is no information available concerning what it actually covered.

In 1972, when the flat grant was established, the 1965 figured needed to be *updated* by the *percentage* change in actual operating costs from 1965 thru 1969. This was done and the standard was increased to $.05/mile — see attached sheet. This had to be done even though the $.045 covered in excess of actual costs.

Operating Costs	Gas, Oil & Taxes
1965	1969
.0258/mi.	.0276/mi. a 6.97% change

1965 Standard $.045 + $.003 = $0.48 —
new standard 1972 = .05

In 1972, after consultation with State Insurance Department, it was determined that the actual cost of comprehensive No Fault Insurance would run $.019/mile.

1972 Operating Costs - U. S. Dept. of Trans.
(see attached sheet)

Gas, Oil, Taxes	$.034/mi.
No Fault Insurance	.019/mi.
Total	$.053/mi.

On this basis the cost of transportation by car was increased from $.05 to $.06/mi. on 1/1/73.

38. *QUESTION:* Please explain how the five cents per mile transportation expense allowances formerly located at Connecticut Welfare Manual, Volume I, Chapter III, Index 332.31 (2) (b) (2) and (2) (b) (3) (effective 10-1-72) were computed and why increases in the transportation allowances were made.

ANSWER: See Answer #37.

39. *QUESTION:* Please explain in detail how the six cents per mile transportation expense allowances located at Connecticut Welfare Manual, Volume I, Chapter III, Index 332.31 (2) (b) (2) and (2) (b) (3) (effective 9-15-73) were computed and why increases in the transportation allowances were made.

ANSWER: See Answer #37.

40. *QUESTION:* In answering interrogatories #37 through #39 above, please list each and every factor and cost used to compute the 4½, 5, and 6 cents per mile allowances along with a statement of the weight given each factor. In doing so, state specifically whether the following operating costs were considered and, if so, the exact operating costs used along with the weight given each cost in your computations:

(a) gasoline cost
(b) gasoline per mile consumed
(c) routine lubrication cost
(d) cost of oil changes
(e) tune up cost
(f) cost of automobile repairs
(g) cost of automobile liability insurance
(h) automobile depreciation cost
(i) property tax costs
(j) accessory replacement cost
(k) replacement tire cost
(l) oil useage cost
(m) cost of garaging, parking and tolls
(n) license and registration costs

ANSWER: See Answer #37, and also (a) (b) (c) (g) (i)

41. *QUESTION:* Did the Welfare Department rely on any official or unofficial studies or surveys concerning the cost

of operating an automobile or of purchasing meals to compute the work-related expense allowances identified in paragraphs #25, #37, #38, and #39.

ANSWER: Yes, Department of Transportation figures: "Cost of Operating an Automobile" Insurance — Prepared by Insurance Dept. according to D. O. T. Standards.

Meal computation costs related to U. S. D. A. raw food cost standards for an adult in 1969. It was assumed that an additional $.50 provided to the working recipient would allow for a bag lunch plus coffee break money.

42. *QUESTION:* If interrogatory #41 is answered affirmatively, please identify such study or survey.

ANSWER: See Answer #41.

43. *QUESTION:* Please give the name and address of the custodian of each and every survey or study identified in response to interrogatory #42.

ANSWER: Mrs. J. Seckinger.

44. *QUESTION:* Has the Welfare Department made periodic increases in the work related expense allowances identified in index 332.31 because of increases in the cost of living?

ANSWER: No, not since 1973.

45. *QUESTION:* Please identify such increases and the precise manner in which increases in the cost of living were used in the computations described in paragraphs 25, 37, 38 and 39 above.

ANSWER: No increases.

46. *QUESTION:* Please specify the amount of plaintiff's incentive earnings award for each and every month from September of 1973 through March of 1975.

ANSWER: See attached sheet. (Appendix D)

47. *QUESTION:* Please specify the total dollar value of plaintiff's transportation expense allowance used by the Department in her incentive earnings award computations for each and every month during the period September, 1973, through March, 1975.

ANSWER: See attached sheet. (Appendix D)

48. *QUESTION:* How many work miles per day did the department use in computing each and every transportation allowance identified in response to interrogatory #47?

ANSWER: See attached sheet. (Appendix D)

49. *QUESTION:* How many days per week did the department assume plaintiff worked in computing each and every transportation allowance identified in response to interrogatory #47?

ANSWER: Information in record is not clear.

50. *QUESTION:* Please specify the total dollar value of plaintiff's lunch expense allowance used by the Department in computing her incentive earnings award for each and every month during the period September, 1973, through March, 1975.

ANSWER: See attached sheet. (Appendix D)

51. *QUESTION:* How many days per week did the department assume plaintiff worked in computing each and every lunch allowance identified in response to interrogatory #50?

ANSWER: 5 days per week from 11/14 to present.

52. *QUESTION:* For what reasons were the work-

related expense policies located at index 332.31 changed between the years 1970 through 1974 so as to increase the number of work expenses specifically allowed?

ANSWER: In 1971, Department went to a flat work expense allowance. This was disallowed by a federal court ruling. Policy then changed to use specific allowances following federal regulation guidelines and intent was to allow expenses reasonably attributable to employment.

53. *QUESTION:* For what reason was the work-related expense located at Index 332.31 (1) (effective 10-1-71) relating to special safety devices needed for handicapped workers deleted from Index 332.31 (1) (revised 9-11-73)?

ANSWER: It was felt such wording singling out the handicap was superfluous and not needed, and these expenses would be covered by items included in 332.31-1.

Dated at Hartford, Connecticut, this day of July, 1975.

EDWARD MAHER
Defendant Commissioner of Social Services

By: CAROLINE E. PACKARD

7.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

ANSWERS TO INTERROGATORIES

1. *QUESTION:* Is it the policy of the Department of Social Services of the State of Connecticut (hereinafter - Department) in accordance with their new incentive earnings policy found in Manual Vol. 1, Chapter III, 332.3 - 332.31, (hereinafter - new index 332.3 *et seq.*) revised May 29, 1975 to allow working AFDC recipients a deduction from their gross earnings, less appropriate income disregards, equivalent to all their reasonable work-related expenses, in computing their AFDC incentive earnings award?

1. *ANSWER:* It is the policy of the Department of Social Services to allow a deduction from gross earnings, after the application of the appropriate disregard of any expense(s) reasonably attributable to the earning of such income.

2. *QUESTION:* Is it the practice of the Department, in accord with their new policy found at new index 332.3 *et seq.*, to allow working AFDC recipients a deduction from their gross earnings, less appropriate income disregards, equivalent to all their work-related expenses, in computing their AFDC incentive earnings award?

2. *ANSWER:* It is the practice of the Department of Social Services to allow a deduction from gross earnings, after the application of the appropriate disregard of any expense(s) reasonably attributable to the earning of such income.

3. *QUESTION:* What procedure have intake and redetermination workers been instructed to follow in implementing the new policy and practice referred to in paragraphs 1 and 2 above?

3. *ANSWER:* The policy set forth in the revised index 332.31 of the Policy Manual is clearly marked and self-implementing and intake and redetermination workers are required to apply all pertinent policy in processing applications and in making redeterminations.

Supervisors have weekly meetings with workers assigned to them to discuss and review in detail all new or revised policy.

4. *QUESTION:* What procedures have intake and redetermination worker supervisors been instructed to follow in implementing the new policy and practice referred to in paragraphs 1 and 2 above?

4. *ANSWER:* See Answer to Question #3.

5. *QUESTION:* Have intake or redetermination workers or their supervisors been instructed to inform working AFDC recipients of their right to claim deductions for work related expenses in addition to the amounts or items referred to at new index 332.3 *et seq.* at eligibility determinations or redeterminations?

5. *ANSWER:* See Answer to Question #3.

6. *QUESTION:* Do intake or redeterminations workers or their supervisors have the authority to allow as deductions from income, expenses other then those listed under new index 332.31 (1) and (2) where they determine such expenses are reasonably attributable to the earning of income?

6. *ANSWER:* No, this is the responsibility of the Deputy Commissioner. See index 332.31 (3).

7. *QUESTION:* If intake or redetermination workers or their supervisors have the authority to allow as deductions from income, expenses other then those listed under new index 332.31(1) and (2), have any standards or guidelines been enunciated to guide them in determining when an expense is reasonably attributable to the earning of income?

7. *ANSWER:* See Answer to Question #6.

8. *QUESTION:* If interrogatory 6 is answered affirmatively, please delineate such standards or guidelines fully.

8. *ANSWER:* See Answer to Question #6.

9. *QUESTION:* If interrogatory 6 is answered negatively, are such workers or their supervisors instucted to deny requests for types of work related expense deductions not listed at new index 332.31(1) and (2)?

9. *ANSWER:* No. See index 332.31(3).

10. *QUESTION:* Do intake or redeterminations workers or their supervisors have the authority to refer requests for types of work-related expense deductions not listed at new index 332.31 (1) or (2) to the Deputy Commissioner for consideration pursuant to new index 332.31(3)?

10. *ANSWER:* Yes, they are required to do so.

11. *QUESTION:* If interrogatory 9 is answered affirmatively, please describe the procedure fully.

11. *ANSWER:* See Answer to Question #9.

12. *QUESTION:* If interrogatory 9 is answered affirmatively, please delineate each and every standard and guideline which workers or their supervisors are instructed to follow in determining whether such requests to the Deputy Commissioner are to be made?

12. *ANSWER:* See Answer to Question #9.

13. *QUESTION:* Do fair hearing officials have the authority to allow work-related expense deductions other than those listed at new index 332.31(1) and (2) where they determine such expenses are reasonably attributable to the earning of income?

13. *ANSWER:* Yes if index 332.31(1) (2) and (3) has been complied with.

14. *QUESTION:* If interrogatory 13 is answered negatively, are fair hearing officials instructed to deny requests for types of work-related expense deductions not listed at the new index 332.31 (1) and (2)?

14. *ANSWER:* See Answer to Question #3.

15. *QUESTION:* Can fair hearing officials refer requests for types of work-related expense deductions not listed at new index 332.31(1) or (2) to the Deputy Commissioner for consideration pursuant to the new index 332.31(3)?

15. *ANSWER:* No. New claims not made to the district office cannot be presented for the first time at the fair hearing.

16. *QUESTION:* If interrogatory 15 is answered affirmatively, please describe the procedure fully.

16. *ANSWER:* See Answer to Question #15.

17. *QUESTION:* If interrogatory 15 is answered affirmatively, please delineate each and every standard and guideline which fair hearing officials are instructed to follow in determining whether such requests to the Deputy Commissioner are to be made?

17. *ANSWER:* See Answer to Question #15.

18. *QUESTION:* Do fair hearing officials refer requests for work-related expense allowances to home management consultants whenever allowance standards do not appear in new index 332.3 *et seq.*

18. *ANSWER:* No. See Answer to Question #15.

19. *QUESTION:* If interrogatory 30 is answered affirmatively, please delineate each and every standard and

guideline which fair hearing officials are instructed to follow in determining whether such referrals to a home management consultant are to be made?

19. *ANSWER:* The defendant-commissioner is seeking a protective order from the court so as not to be required to answer interrogatory #30.

20. *QUESTION:* Please explain fully each and every standard and guideline used by home management consultants to formulate allowances for work-related expenses.

20. *ANSWER:* It would be impossible to enumerate every standard and guideline used by the home management consultant to formulate allowances for work-related expenses. If a specific request is made, the home management consultant refers to current Sears Roebuck mail order catalogue to determine the fair cost of the item. In addition, the home management consultant consults by telephone with retail outlets and makes personal inspections for the specific item in question.

21. *QUESTION:* If interrogatory 30 is answered affirmatively are fair hearing officials authorized to award reasonable work-related expenses exceeding standards formulated by home management consultants?

21. *ANSWER:* See Answer to Question #19.

22. *QUESTION:* Please identify and summarize the contents of each and every document, memorandum or other writing of any kind which contains any instructions or articulates any policy which related in any way to the incentive earnings program, as amended May 29, 1975.

22. *ANSWER:* See Incentive Earnings Kit which is attached as Appendix A. IRS Circular E (Employer's Tax Guide) Rev. April 1975, has been omitted from this Appendix.

23. *QUESTION:* Please give the name and address of the custodian of each and every document identified in your response to interrogatory 22.

23. *ANSWER:* Miss Caroline Packard, % Department of Social Services, 110 Bartholomew Street, Hartford, Connecticut.

24. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances pursuant to index 332.31 (2) b1, and b2 as amended May 29, 1975?

24. *ANSWER:* The Department of Social Services does not keep statistical information of this kind. In order to obtain the information requested, the Department would have to make a search of more than 4,500 individual case records in the various district offices throughout the State. Such an undertaking would require the expenditure of hundreds of man hours be Department personnel, at a time when the Department is under severe pressure to handle its work load, because of the abnormally high case load attributable in large measure to the depressed state of the economy and the ensuing high rate of unemployment. Consequently, the defendant is seeking to have the court enter a protective order which will not require the defendant to undertake to provide this information.

25. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances greater than the one specified in index 332.31 (2)(b) 1, and 2, as amended May 29, 1975.

25. *ANSWER:* See Answer to Question #24.

26. *QUESTION:* How many working AFDC recipients are presently given the work-related lunch expense allowance identified at index 332.31 (2)(a) 1, as amended May 29, 1975?

26. *ANSWER:* See Answer to Question #24.

27. *QUESTION:* How many working AFDC recipients are presently given the work-related lunch expense allowances greater than 50 cents a day?

27. *ANSWER:* See Answer to Question #24.

28. *QUESTION:* How many working AFDC recipients are presently given work-related meal expense allowances other then the one identified by index 332.31 (2)(a)(1), as amended May 29, 1975?

28. *ANSWER:* See Answer to Question #24.

29. *QUESTION:* How many working AFDC recipients are presently given the work-related clothing expense allowances specified in index 332.31 (1), as amended May 29, 1975?

29. *ANSWER:* See Answer to Question #24.

30. *QUESTION:* How many working AFDC recipients are presently receiving a work-related clothing allowance, for clothing needed for work that is neither a uniform or *special* protective clothing, pursuant to index 332.31 as amended May 29, 1975?

30. *ANSWER:* See Answer to Question #24.

31. *QUESTION:* For what reason was the word "protective" added so that it precedes the word "clothing" under index 332.31 (1) as amended May 29, 1975?

31. *ANSWER:* The word "protective" precedes the word "clothing" in index 332.31 to indicate that the Department will allow, as a work expense reasonably attributable to the earning of income, the cost of clothing which is necessary for the protection of the worker and/or for the protection of the

worker's clothing if the worker does not wear special work-clothing on the job. For example, if a worker wears a required uniform, this would be considered special work-clothing. If a worker wears regular or "street" clothing on the job, an allowance for a protective apron could be made if working conditions are such that a worker's regular clothing is subjected to abnormal damage, soiling or staining.

32. *QUESTION:* Does the Department allow working AFDC recipients deductions from their gross earning less appropriate income disregards, equivalent to work-related expenses, other than those listed at index 332.31, as amended May 29, 1975, in computing their AFDC incentive earnings award?

32. *ANSWER:* No.

33. *QUESTION:* If interrogatory 22 is answered affirmatively, describe each such work-related expense as has been allowed since May 29, 1975, and when such allowance was made.

33. *ANSWER:* See Answer to Question #32.

34. *QUESTION:* Does the Department allow AFDC recipients deductions from their gross earnings equivalent to the reasonable work-related transportation expenses identified at index 332.31 (2)(b)(2) and (2)(b)(3) exceeding $.06 per mile.

34. *ANSWER:* Yes, if index 332.31 is complied with.

35. *QUESTION:* Does the Department allow AFDC recipients deductions from their gross earnings equivalent to reasonable work-related food expenses exceeding $.50 per day?

35. *ANSWER:* See Answer to Question #34.

36. *QUESTION:* Subsequent to the adoption of new index 332.3 *et seq.* were attempts made to determine if any working AFDC recipients were entitled to greater work-related expense allowances.

36. *ANSWER:* No.

37. *QUESTION:* If the answer to interrogatory 36 is affirmative, give a complete description of the department's efforts to determine if any working AFDC recipients were entitled to greater work-related expense allowances.

37. *ANSWER:* See Answer to Question #36.

38. *QUESTION:* Please give the name and address of each and every document, memorandum or other writing of any kind which contains any instructions or articulates any policy which relates in any way to department efforts specified in response to interrogatory 37.

38. *ANSWER:* See Answer to Question #36.

39. *QUESTION:* Please give the name and address of the custodian of each and every document identified in response to interrogatory 37.

ANSWER: See Answer to Question #23.

EDWARD W. MAHER
Commissioner of Social Services
Department of Social Services

By: CAROLINE E. PACKARD
Chief, Policy Development
Department of Social Services

(JURAT OMITTED)

8.

United States District Court

District of Connecticut

VIRGINIA GAGNE, Individually
and on behalf of all others
similarly situated

vs Civil No. H-75-1

EDWARD W. MAHER, Commissioner
of Welfare, et al

RULING ON PLAINTIFF'S MOTION TO COMPEL ANSWERS AND DEFENDANTS' MOTION FOR A PROTECTIVE ORDER

The plaintiff's motion of January 29, 1976, requests that the Court order the defendant Welfare Commissioner to answer Interrogatories Nos. 24 through 30, filed by the plaintiff on December 29, 1975. The defendant responded with a motion for a protective order, claiming that were it to be required to answer would be unduly burdensome, because it would require the examination of 4,500 files in already overburdened district offices across the State.

After reviewing the respective pleadings of the parties, the memoranda filed with the motions, and having heard the arguments of counsel, the Court finds that a fair sampling of one large urban district office and one smaller semi-rural office, covering the information sought, should be adequate to serve the plaintiff's purpose. Therefore, it is ORDERED that the defendant shall answer Interrogatories Nos. 24 through 30 for all information requested covering the Hartford and Norwich District Offices. The survey of those two district offices should provide an adequate and meaningful response, to satisfy the

plaintiff's purposes, and at the same time not be overly burdensome.

Compliance shall be had within twenty (20) days.
SO ORDERED.

Dated at Hartford, Connecticut, this 4th day of March, 1976.

T. EMMET CLARIE
Chief Judge

9.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

SUPPLEMENTAL ANSWERS TO INTERROGATORIES

Pursuant to the Court's order of March 4, 1976, the following are the Answers to Interrogatories, Numbers 24 through 30, covering the Hartford and Norwich district offices of the Department of Social Services. This information has already been sent to counsel for plaintiffs on March 31, 1976.

24. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances pursuant to index 332.31(2) b1, and b2, as amended May 29, 1975?

ANSWER: Hartford District Office 1148
Norwich District Office 321
Total 1469

25. *QUESTION:* How many working AFDC recipients are presently given work-related transportation expense allowances greater than the one specified in index 332.31 (2)(b) 1, and 2, as amended May 29, 1975?

ANSWER: Hartford District Office 1
Norwich District Office 0

26. *QUESTION:* How many working AFDC recipients are presently given the work-related lunch expense allowance identified at index 332.31 (2)(a) 1, as amended May 29, 1975?

ANSWER: Hartford District Office 1083
Norwich District Office 294
Total 1377

27. *QUESTION:* How many working AFDC recipients are presently given the work-related lunch expense allowances greater than 50-cents a day?

ANSWER: Hartford District Office 1
Norwich District Office 0

28. *QUESTION:* How many working AFDC recipients are presently given work-related meal expenses allowances other than the one identified by index 332.31 (2)(a)(1), as amended May 29, 1975?

ANSWER: Hartford District Office ..... None
Norwich District Office ..... None

29. *QUESTION:* How many working AFDC recipients are presently given the work related clothing expense allowances specified in index 332.31 (1), as amended May 29, 1975?

ANSWER: Hartford District Office 85
Norwich District Office 36
Total 121

30. *QUESTION:* How many working AFDC recipients are presently receiving a work-related clothing allowance, for clothing needed for work that is neither a uniform or *special* protective clothing, pursuant to index 332.31 as amended May 29, 1975?

ANSWER: Hartford District Office 0
Norwich District Office 0

EDWARD W. MAHER
Commissioner of Social Services
Department of Social Services

By: CAROLINE E. PACKARD, *Chief*
Policy Department
Department of Social Services

(JURAT OMITTED)

10.

United States District Court

District of Connecticut

(TITLE OMITTED IN PRINTING)

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff, individually and on behalf of all persons similarly situated, seeks injunctive and declaratory relief with regard to certain state regulations which are being applied by the defendants in a way that deprives plaintiff of benefits secured to her by the incentive earnings portion of the Aid to Families with Dependent Children provisions of the Social Security Act (42 U.S.C. Sec. 601 et. seq.). The plaintiff, Virginia Gagne, is a full-time employee of the Bass Plating Company, Bloomfield, Connecticut. Plaintiff wishes to have her expenses, reasonably attributable to the production of income, fully considered in computing her AFDC award under the incentive earnings program. Defendant has implemented its incentive earnings policy set forth at Connecticut Welfare Manual, Volume I, Chapter III, Index 332.31 (effective 9-15-73) (see exhibit A attached and incorporated herein as if fully pleaded) as amended on May 31, 1975 (see exhibit B attached and incorporated herein as if fully pleaded) so as to limit work related expense allowances. Plaintiffs claim that defendant so limits expense allowances: (a) by limiting their earned income disregards equivalent to those expenses listed in Department Policy; (b) by not adopting procedures reasonably calculated to inform recipients as to whether their requests for expenses other than those listed in Department Policy have been granted or denied or of their right to challenge adverse determinations in a fair hearing, and (3) by not renewing and upgrading transportation and lunch allowances provided in the policy which bear no relation to the actual cost of transportation and lunches in present day economy.

2. Plaintiffs challenge defendant's incentive earnings policies and practices located at Volume I, Chapter III, Index 332.31 of the Connecticut Welfare Manual on the grounds that they violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution and conflict with the Social Security Act and regulations promulgated pursuant to it.

II. JURISDICTION

3. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. sections 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments, and by 42 U.S.C. section 1983, which provides redress for the deprivation under color of state law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

4. Jurisdiction is conferred on this Court by 28 U.S.C. section 1343.

III. THREE-JUDGE COURT

5. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. sections 2281, 2284 since plaintiff seeks an injunction to restrain defendants, who are state officers, from the enforcement, operation and execution of a state regulation (Connecticut Welfare Manual Volume I, Chapter III, Index 332.31) of state-wide applicability on the ground that said statute is contrary to the Constitution of the United States and the Social Security Act.

IV. PLAINTIFF

6. Plaintiff Virginia Gagne is a citizen of the United States and of the State of Connecticut, and a resident of the Town of Bloomfield, Connecticut.

V. DEFENDANTS

7. Defendant, Edward W. Maher, is the Commissioner of Welfare of the State of Connecticut and is entrusted under section 17-3a of the Connecticut General Statutes with the responsibility for the promulgation of rules and regulations for the operaton of town assistance and for the supervision of this program.

VI. CLASS ACTION

8. The named plaintiff brings this action in her own behalf and, pursuant to the Federal Rules of Civil Procedure 23a and (b) (2), on behalf of all other persons similarly situated. The members of the class similarly situated are all AFDC recipients in the State of Connecticut whose expenses reasonably attributable to the earning of income are not fully considered in computing their AFDC grant. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the parties opposing the class have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole. Counsel for the plaintiff will adequately represent the interest of the class.

VII. FACTS

9. Plaintiff, Virginia Gagne, is a resident of Bloomfield, Connecticut and the mother of four children. She supports herself and her children with income earned at the Bass Plating Company, Bloomfield, Connecticut and incentive earning payments under the Aid to Families with Dependent Children (AFDC) program administered by the State Welfare Department.

10. Virginia Gagne's earned income is reported to and fully taken into consideration by the State Welfare Department in computing her AFDC award.

11. Mrs. Gagne has found it necessary to purchase and maintain a 1963 Ford Fairlaine automobile as a means of travelling to and from work (round trip - 8.4 miles) because public transportation between her home and the Bass Plating Company is inaccessable.

12. The Bass Plating Company allows employees a one-half hour lunch and fifteen minute coffee breaks.

13. Time restrictions and the location of alternative eating establishments (commercial food establishment closest to the Bass Plating Company is approximately three miles away) make it extremely difficult for the plaintiff to purchase work-related food at any location other than her employer's place of business.

14. On August 19, 1974, the plaintiff, through her attorney, represented to her worker that many of her work-related expenses including food and transportation costs were being either improperly excluded from or not fully considered in her incentive earnings computations.

15. Mrs. Gagne was told that certain of the exclusions were improper but that transportation and food allowances were fixed by departmental policy and could not be changed.

16. Plaintiff, aggrieved by this decision to limit her work-related food and transportation allowances to $.50 per day and $.06 per mile respectively and to refuse to consider work-related clothing expenses in computing her AFDC award, requested a Fair Hearing.

17. During negotiations preceding the September 24, 1974 Fair Hearing, plaintiff renewed her demand that her reasonable work-related transportation and food expenses be fully deducted in her AFDC award computations.

18. The fair hearing liaison worker, although willing to make certain changes in Mrs. Gagne's allowable expenses, stated that she could not allow food and transportation expenses exceeding the standards prescribed in Index 332.31, regardless of a recipient's circumstances.

19. It was establishd at the September 24, 1974 Fair Hearing that is costs Virginia Gagne at least 13.9 cents per mile to operate her automobile for work purposes. The fair hearing officer, using a twelve cents per mile figure, computed her monthly transportation costs to be $21.84 (184 miles times $.12 per mile) — exactly double that allowed by defendants' policy.

20. It was also established at the hearing that plaintiff's reasonable work-related food expenditures are $1.65 per day or $35.75 monthly — more than three times the defendants' monthly lunch allowance.

21. Because of the special circumstances of plaintiff's employment, it would be impossible to obtain transportation or to purchase food reasonably necessary for work for the amounts specified in Index 332.31.

22. Plaintiff further submitted evidence to the fair hearing official that the circumstances of her employment made it necessary for her to work with harsh chemicals that destroy work clothing and shoes. It was established that a modest estimate of her additional clothing needs was $10.00 a month.

23. The fair hearing officer found (see Exhibit B attached and incorporated herein as if fully pleaded) that although plaintiff's transportation, clothing and food costs greatly exceeded defendants' allowances, the agency was correct in adhering to its policy. No reason were given for his decision in this regard.

24. On November 26, 1974, the plaintiff's attorney wrote a letter to Henry Boyle, Deputy Commissioner of Welfare, with a copy to Assistant Attorney General Francis MacGregor in an

attempt to resolve this dispute (see Exhibit C attached and incorporated herein as if fully pleaded). No response to this inquiry has been received.

25. On or about May 31, 1975, the Connecticut Department of Social Services amended its policies so as to include the statement that reasonable work-related expenses different from or greater than those specified at Index 332.31 could be awarded by the Deputy Commissioner's office of the Department of Social Services (see attached Exhibit D incorporated herein as if fully pleaded).

26. Defendant's new policy has been implemented in such a manner that reasonable work-related expenses different from or greater than those listed at Index 332.31 are routinely disallowed.

27. Department policy requires face-to-face redeterminations semiannually.

28. Plaintiff has undergone face-to-face redeterminations on February 10, 1976, and August 15, 1976. The redetermination workers hurriedly secured verification of income changes, but did not discuss changes in her work-related expenses or inform her that she could claim expenses different from or greater than those specified in department policy.

29. Plaintiff subsequently received Form W-52T indicating changes in the amount of her AFDC award (see attached Exhibits E and F incorporated herein as if fully pleaded).

30. Said Forms W-52 T are so designed that plaintiff cannot determine whether her work-related expense allowances are reasonable in light of her actual expenses.

VIII. FIRST CAUSE OF ACTION:

Paragraphs 1 through 30 are hereby incorporated by reference as paragraphs 1 through 30 of the FIRST CAUSE OF ACTION, the same as if fully pleaded.

31. Section 402(a)(7) of the Social Security Act (42 U.S.C. Section 602(a)(7)) requires state plans thereunder to provide that, in determining the need for assistance of a recipient, the state agency shall take into consideration any income of such individuals "as well as any expenses reasonably attributable to the earning of any such income."

32. Thus, state agencies are required, in computing individual welfare grants, to disregard earned income equivalent to those expenses that can reasonably be termed work-related. 45 C.F.R. Section 233.20(a)(3)(iv)(a).

33. Connecticut General Statutes Section 17-83 authorizes the Commissioner of Welfare to make regulations including those regulations necessary to receive grants from the federal government.

34. Connecticut Department of Social Services Manual, Volume I, Chapter III, Index 332.31 specifies types of allowable work-related and standard lunch and transportation expenses.

35. These regulations are applied by defendant in such a manner that recipients are not awarded reasonable work-related expenses greater than or different from the standard allowances specified in department policy.

36. Recipients are afforded no meaningful opportunity to show reasonable work-related expenses different from or greater than those specified in department policy.

37. The state regulation (Index 332.31) as administered by Connecticut, by failing to take into consideration all of plaintiff's expenses reasonably attributable to the production of income, conflicts with the federal statutes and regulations and violates the Supremacy Clause of the United States Constitution.

IX. SECOND CAUSE OF ACTION:

Paragraphs 1 through 37 of the FIRST CAUSE OF ACTON are hereby incorporated by reference as paragraphs 1 through 37 of the SECOND CAUSE OF ACTION, the same as if fully pleaded.

38. Connecticut Department of Social Service Manual, Volume I, Chapter III, Index 332.31 establishes lunch and transportation expense allowance standards for certain AFDC recipients.

39. Defendant's manual further specifies types of work-related expenses for which deductions from earned income of AFDC recipients can be made.

40. Defendant's policy is that allowances can be made for work-related expenses greater than or different from those listed at Index 332.31 only if recipients present such claims to workers in writing and that such written requests are forwarded to the Deputy Commissioner's office before they are presented at a fair hearing.

41. Defendant neither informs working AFDC recipients of their right to claim expense deductions other than those specified in department policy, that such claims must be presented in writing or that they must be presented to the Deputy Commissioner before a fair hearing can be won on the issue.

42. Defendant's notification of action (Form W-52T) issued after initial or redetermination interviews fails to notify working AFDC recipients as to whether their claims for reasonable work-related expenses greater than or different from those specified in department policy have been awarded in any meaningful manner and that AFDC recipients have a right to challenge adverse determinations on claims for work-related expense deductions.

43. Defendant's practices and policies violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that:

a) Defendant's practices and policies establish an irrebutable presumption that plaintiff's reasonable work-related transportation, lunch and clothing expenses different from or greater than those specified at Index 332.31 are unreasonable and operate to deny plaintiff and the class she represents a fair opportunity to rebut it.

b) The standard lunch and transportation allowances specified at Index 332.31 are arbitrary and unreasonable in that they were not developed by a statistically fair averaging, nor do they reflect current prices.

c) Defendants have failed to adopt procedures reasonably calculated to inform working AFDC recipients as to whether their claims for reasonable work-related expenses greater than or different from those specified at Index 332.31 have been denied and their right to challenge any adverse determination in a fair hearing.

X. THIRD CAUSE OF ACTION

Paragraphs 1 through 43 of the SECOND CAUSE OF ACTION are hereby incorporated by reference as paragraphs 1 through 43 of the SECOND CAUSE OF ACTION, the same as if fully pleaded.

44. The defendants' regulations at Connecticut State Welfare Manual, Index 332.31 create two classes of working AFDC recipients: one class consists of those recipients whose expenses reasonably attributable to the production of income are fully considered in computing their AFDC grants and the other class consists of recipients whose work-related expenses are not fully considered in computing their AFDC award.

45. These two classes are indistinguishable in light of the purposes of the work expense disregard provisions of the AFDC program — namely, to provide a work incentive for AFDC recipients.

46. Defendants' practice and policy which constitute an invidious discrimination against persons whose work-related expenses exceed the allowances set forth in Index 332.31 and violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by forbidding plaintiff and the class she represents ever from controverting the presumption that their work-related expenses exceeding the transportation and food allowances of Index 332.31 are unreasonable.

XI. PRAYER FOR RELIEF

WHEREFORE, the plaintiff respectfully requests in her own behalf, and in behalf of all those similarly situated, that this Court:

1. Assume jurisdiction of this cause, convene a three-judge district court pursuant to 28 U.S.C. sections 2281 and 2284 to determine this controversy, and set this case down promptly for a hearing.

2. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Enter a final judgment pursuant to 28 U.S.C. sections 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that defendants' regulation contained at Volume I, Chapter III, Index 332.31 of Connecticut's Welfare Manual invalid as inconsistent with 42 U.S.C. section 602 (a)(7) and 45 C.F.R. section 233.20(a)(3)(iv)(a) and, therefore, violative of the Supremacy Clause of the United States Constitution.

4. Enter a final judgment pursuant to 28 U.S.C. sections 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that the Connecticut Regulations found at Volume I, Chapter III, Index 332.31 are invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution.

5. Enter a permanent injunction pursuant to Rule 65 of the

Federal Rules of Civil Procedure, enjoining defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them, from refusing to consider any of plaintiff's or her class's expenses reasonably attributable to the production of income in computing their AFDC awards.

6. Order the defendants, their successors in office, agents and employees, to notify promptly by first class mail at their last known address all persons who have been denied AFDC benefits because of the provisions and interpretations of state and federal law enjoined herein that they are now eligible for such benefits and may reapply.

7. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow plaintiff her costs herein, and also grant her and all persons similarly situated such additional or alternative relief including payment of all monies wrongfully withheld, as may seem to this Court to be just, proper and equitable.

Dated at Hartford, Connecticut this 10th day of September, 1976.

RESPECTFULLY SUBMITTED,

By: DAVID C. SHAW
Juris No. 56493
525 Main Street
Hartford, Connecticut 06103
Tel: (203) 566-6360

Attorney for Plaintiff

By: JOAN E. PILVER
Juris No. 46650
525 Main Street
Hartford, Connecticut 06103
Tel: (203) 566-6360

Attorney for Plaintiff

(CERTIFICATION OF SERVICE OMITTED)

11.

United States District Court

District of Connecticut

Connecticut State Welfare Department — Manual Vol. I
Social Service Policies — Public Assistance — Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Available Cash Income — All Programs — 332.3 - 332.31

332.3 Incentive Earnings — All Programs

Policy on Earned Income

To determine the amount of available earned income there is:

1. Disregard of specified amounts of earnings
2. Consideration of expenses of employment

Earned Income

Earned income is gross income earned through the receipt of wages, salary, commission or profit from activities in which the individual is either a self-employed individual or an employee.

Earned income received from self-employment means the total profit from business enterprise, farming, etc., resulting after the total cost of business expenses or cost of production of the income is deducted from the gross income. Personal expenses such as income tax payments, social security deductions, lunches, transportation, etc., are not classified as business expenses.

Disregard if earned income is for the period during which it is earned rather than when it is paid in cases of

lump sum payments for services rendered over a period of more than one month.

332.31 **Expenses of Employment**

After the application of the appropriate disregard of incentive earnings, the following expenses incident to employment are to be deducted from the balance of the earnings:

1. *Non-personal work expenses* including union dues (if mandatory), cost of tools, materials, uniforms or other *special* clothing necessary for the job, *when they are not paid for or furnished by the employer*. Transportation to call on customers when not reimbursed by the employer.

2. *Personal work expenses* such as proper withholding tax based upon the maximum number of deductions to which applicant or recipient is entitled, social security tax, group life insurance and Blue Cross or other health insurance, if paid, as well as lunches and transportation.
   a. *Daily lunch allowance*
      (1) .50 cents per working day
   b. *Transportation allowance* - to work and return
      (1) cost per work day by public conveyance, or
      (2) cost of .06 per mile in recipient-owned car, or
      (3) cost of .06 per mile in car pool

If after the application of the disregard, the amount remaining is less than the actual employment expense, the difference between the two is not met by the department.

Revised 9-11-73
Effective 9-15-73

12.

United States District Court

District of Connecticut

Connecticut State Welfare Department — Manual Vol. I
Social Service Policies — Public Assistance — Chapter III

NEED REQUIREMENTS AND THE ASSISTANCE PAYMENT

Available Cash Income — All Programs — 332.3 - 332.31

332.3 **Incentive Earnings — All Programs**

Policy on Earned Income

To determine the amount of available earned income there is:

1. Disregard of specified amounts of earnings
2. Consideration of expenses of employment

Earned Income

Earned income is gross income earned through the receipt of wages, salary, commission or profit from activities in which the individual is either a self-employed individual or an employee.

Earned income received from self-employment means the total profit from business enterprise, farming, etc., resulting after the total cost of business expenses or cost of production of the income is deducted from the gross income. Personal expenses such as income tax payments, social security deductions, lunches, transportation, etc., are not classified as business expenses.

Disregard if earned income is for the period during which it is earned rather than when it is paid in cases of

lump sum payments for services rendered over a period of more than one month.

332.31 **Expenses of Employment**

After the application of the appropriate disregard of incentive earnings, any expenses reasonably attributable to the earning of such income are to be deducted from the balance of the earnings. The following are the most frequently encountered kinds of allowable expenses:

1. Non-personal work expenses including union dues (if mandatory), cost of tools, materials, uniforms or other *special* protective clothing necessary for the job, *when they are not paid for or furnished by the employer.* Transportation to call on customers when not reimbursed by the employer.

2. *Personal work expenses* such as proper withholding tax based upon the maximum number of deductions to which applicant or recipient is entitled, social security tax, group life insurance and Blue Cross or other health insurance, if paid, retirement plan, if mandatory, as well as lunches and transportation.

   a. *Daily lunch allowance*
      (1) .50 cents per working day

   b. *Transportation allowance* - to work and return
      (1) cost per work day by public conveyance, or
      (2) cost of .06 per mile in recipient-owned car, or
      (3) cost of .06 per mile in car pool

3. The following claimed expenses are to be referred to the Office of the Deputy Commissioner for

consideration: expenses other than those listed under items 1 and 2 which are claimed as being reasonably attributable to the earning of income. The Department will consider such expenses and decide whether they are so attributable.

If after the application of the disregard, the amount remaining is less than the actual employment expense, the difference between the two is not met by the department.

Revised 5-29-75

13.

United States District Court

District of Connecticut

CONNECTICUT STATE WELFARE DEPARTMENT
NOTICE OF ACTION

143 | CASE LOAD NO. | CASE NO.(S) 011-C-800558

IMPORTANT

The State Welfare Department has acted on your case in the manner shown in Section I below.

If this action involves new or revised payments, you will find the schedule of such payments and the budget on which they are based in Section II.

See the reverse side of this notice for other information important to you.

TO:
Virginia Magone
45 Hillcrest Ave.
Bloomfield, Conn. 06002

☐ CASE ADDRESS (if different)
☐ FORMER NAME/ADDRESS
☐ CHANGE CONS. OR SUB. PAYEE

SECTION I - ACTION TAKEN

☐ APPLICATION WITHDRAWN AT YOUR REQUEST ☐ APPLICATION DENIED (See "Explanation" below)

ASSISTANCE GRANTED AS SHOWN →	ONCE A MONTH	AMOUNT	EFFECTIVE DATE
	TWICE A MONTH	$	

CLEAR PROVISIONAL ☐ ELIGIBLE ☐ NOT ELIGIBLE FROM TO

CHANGE AMOUNT OF PAYMENT		FROM	TO	EFFECTIVE DATE
	MONTHLY	$	$	
	AFDC RENT			
	SEMI-MONTHLY			8/1/74

ADDITIONAL CHECK WILL BE ISSUED ☐ SUPPLEMENTAL ☐ DUPLICATE AMOUNT $ CHECK DATED

PAYMENTS TO YOU HAVE BEEN ☐ SUSPENDED ☐ REINSTATED ☐ DISCONTINUED EFFECTIVE DATE

WE ARE HOLDING CHECK OF | RELEASING CHECK OF 8/1/74 ex Discontinued | CANCELING CHECK OF

ONE CHECK WILL BE CHANGED AS SHOWN | CHECK DATED | REGULAR AMOUNT $ | AMT. THIS CHECK $

CHECK WILL BE SENT TO → AMOUNT

SECTION II - BUDGET & PAYMENTS

INCOME	SUFF.		NEEDS	
OASDI Primary		$	Shelter	$
OASDI Secondary			Food	
Unemp. Comp.			Clothing	
Relatives			Personal	
Other (Explain below)			Household Supplies	
TOTAL INCOME		$705.10	Cooking Fuel	
TOTAL NEEDS		$981.95	Electricity	
APPLIED INCOME		908.95	Heat	
MONTHLY DEFICIT		$ 73.00	Board & Room or Med. Care	
PAYMENTS			Homemaker Services	
1st of Month		$	Day Care	
16th of Month			Other (Specify)	
Medical Facility			TOTAL NEEDS	$

FAMILY MEMBERS—	EL.	BIRTHDATE	SEX	A/R	EFFECTIVE DATE	SOCIAL SECURITY NO.(S)	RELATIONSHIP—AFDC
HEAD Virginia Magone	1	12/10/95	F			042-28-4660	mother
1 James	1	8/9/57					
2 Scott	1	9/28/61					
3 Kendall	1	11/29/62					
4 Valerie	1	10/28/65					
5							
6							
7							
8							
9							
10							
11							

MEDICAL SERV.	X	EFFECTIVE	TERMINATE
ELIGIBLE ALL			
AUTHORIZATION REQUIRED AS CHECKED BELOW			
1 All Services			
2 Phys., Home/Off.			
3 Drugs			
4 Clinic			
5 V.N.A.			
6 Gen. Hosp.			
7 Medical Fac.			
8 Other			

EXPLANATIONS
SAR complete
see 365119 for DC

NO CHG ☐ CHG ☑ NEW ☐ DISC ☐ O ☐
EFFECTIVE DATE 8/1/74
NO. OF CHILDREN TOTAL 4 IN DAY CARE 4
NO. OF EMPLOYED PERSONS IN ASSTST. UNIT 1

Gross	$ 705 10
Incent. Earn	255 09
Expenses	121 18
Available	908 95
OTHER DISREGARD $	OTHER INCOME $
SOURCE	

FLAT GRANT
CHANGE
☐ ASSISTANCE UNIT
☑ INCOME
☐ ESSENTIAL SERVICES
ELIGIBLE FOR GRANT (Adults) (Children)

0402333
BENEFICIARY'S COPY

WORKER (Signature) R. Margotta DATE 8/9/74
SUPERVISOR (Initials) J Ryan DATE 8/9/74

14.

United States District Court

District of Connecticut

NOTICE OF ACTION 143 [illegible] 011-C-800558

IMPORTANT

[illegible]

TO: Virginia Cosgne
45 Hillcrest Avenue
Bloomfield, Conn. 06002

[illegible]

SECTION I - ACTION TAKEN

☐ APPLICATION WITHDRAWN AT YOUR REQUEST ☐ APPLICATION DENIED (See "Explanation" below)

ASSISTANCE GRANTED AS SHOWN →	ONCE A MONTH	AMOUNT	EFFECTIVE DATE
	TWICE A MONTH	$	

CLEAR PROVISIONAL ☐ ELIGIBLE ☐ NOT ELIGIBLE FROM TO

CHANGE AMOUNT OF PAYMENT		FROM	TO	EFFECTIVE DATE
	MONTHLY	$	$ no change	
	AFDC RENT			
	SEMI-MONTHLY			

ADDITIONAL CHECK WILL BE ISSUED ☐ SUPPLEMENTAL ☐ DUPLICATE $ CHECK DATED

PAYMENTS TO YOU HAVE BEEN ☐ SUSPENDED ☐ REINSTATED ☐ DISCONTINUED EFFECTIVE DATE

WE ARE HOLDING CHECK OF | RELEASING CHECK OF | CANCELING CHECK OF

ONE CHECK WILL BE CHANGED AS SHOWN | CHECK DATED | REGULAR AMOUNT $ | AMT. THIS CHECK $

CHECK WILL BE SENT TO → AMOUNT

SECTION II - BUDGET & PAYMENTS

INCOME	SUFF.		NEEDS	
OASDI Primary		$	Shelter	$
OASDI Secondary			Food	
[illegible]			Clothing	
Relatives			Personal	
[illegible]			Household Supplies	
TOTAL INCOME		$ 140.73	Cooking Fuel	
TOTAL NEEDS			Electricity	
APPLIED INCOME			Heat	
MONTHLY DEFICIT		$ 140.73	Board & Room or Med. Care	
PAYMENTS			Homemaker Services	
1st of Month		$	Day Care	140.73
[illegible] th			Other (Specify)	
[illegible]			TOTAL	$ 140.73

FAMILY MEMBERS—	EL.	BIRTH DATE	SEX	A/R	EFFECTIVE DATE	SOCIAL SECURITY NO.(S)	RELATIONSHIP AFDC
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							
[illegible]							

MEDICAL SERV.	X	EFFECTIVE	TERMINATE
[illegible]			
[illegible] AUTHORIZATION REQUIRED AS CHECKED BELOW			
[illegible]			
[illegible]			
[illegible]			
[illegible]			
[illegible]			
[illegible]			
[illegible]			

Continue Day Care
@ 140.73 per mth.

[illegible] 752129 R. Cosgne

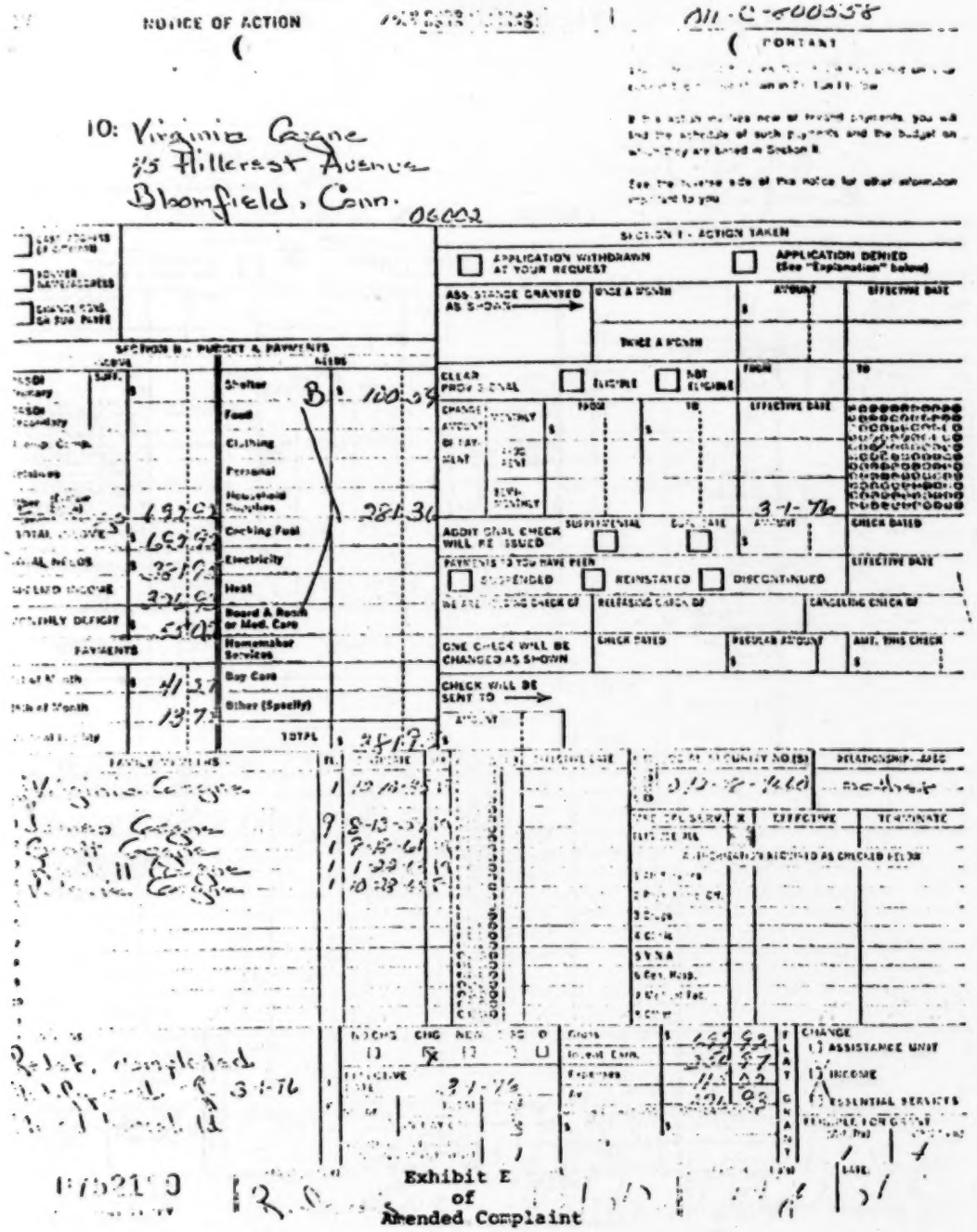
FLAT GRANT
CHANGE
☐ ASSISTANCE UNIT
☐ INCOME
☒ ESSENTIAL SERVICES

Exhibit E
of
Amended Complaint 2-7-75

15.

United States District Court

District of Connecticut


NOTICE OF ACTION

HAR-C-000338

CONTENT

10: Virginia Cayne
35 Hillcrest Avenue
Bloomfield, Conn. 06002

SECTION I - ACTION TAKEN

APPLICATION WITHDRAWN AT YOUR REQUEST

APPLICATION DENIED (See "Explanation" below)

SECTION II - PAYMENTS AND NEEDS

Shelter B $ 100.33

Food

Clothing

Personal

Household Supplies

Cooking Fuel

Electricity

Heat

Board & Room or Med. Care

Homemaker Services

Day Care

Other (Specify)

TOTAL $ 281.30

3-1-76

Exhibit E
of
Amended Complaint

16.

United States District Court

District of Connecticut

NOTICE

A medical services Identification Card accompanies each regular award check that you receive. You must show your latest Identification Card to your doctor, druggist or other vendor whenever you require medical services or supplies.

If you are receiving assistance, you are responsible for notifying your worker immediately of any change in your situation, including living arrangements, household members, income and assets.

If your application was denied because you were found ineligible for assistance, you are free to re-apply if your circumstances change.

If you are dissatisfied with the action taken, you may contact your worker for a review of your case. You also have the right to appeal and request a Fair Hearing within 30 days from the date of this notice. A request for a Fair Hearing must be made in writing, and addressed to the State Welfare Department, State Office Building, Hartford, Connecticut.

If you believe that you have been treated unfairly because of race, color, or national origin you have the right to appeal to the Commissioner of Welfare, the Commission on Civil Rights, or the U. S. Department of Health, Education and Welfare.

If you have further questions feel free to contact your worker.

AVISO

Cada cheque regular que usted recibe está acompañado por una Tarjeta de Identificación para los servicios médicos. Tiene que mostrarle su última Tarjeta de Identificación a su doctor, farmacéutico, u otro vendedor cuando usted necesite los servicios médicos u otras provisiones.

Si usted está recibiendo ayuda, usted es responsable de notificarle inmediatamente a su trabajador cua quier cambio en su situación, incluyendo los arreglos de vivienda, los miembros del hogar, ingresos y capital.

Si su solicitud le ha sido denegada porque se encontró que usted no era elegible para la ayuda, usted tiene el derecho de volver a solicitar si sus circunstancias cambian.

Si usted está desatisfecho con la acción tomada, usted puede comunicarse con su trabajador para la revisión de su caso. Usted tiene también el derecho de apelar y solicitar una Audiencia Imparcial dentro de los 30 días a partir con la fecha de este aviso. La petición para la Audiencia Imparcial se tiene que hacer por escrito y dirigirla a "State Welfare Department, State Office Building, Hartford, Connecticut".

Si usted cree que ha sido tratado injustamente debido a raza, color, u origen de nacionalidad usted tiene el derecho de apelar al Comisionado de Bienestar Público, la Comisión de Derechos Cíviles, o al Departamento de Salud, Educación y Bienestar de los E. U.

Si tiene información adicional siéntase libre en comunicarse con su trabajador.

17.

United States District Court

District of Connecticut

VIRGINIA GAGNE, ET AL.
PLAINTIFF,

vs. CIVIL No. H-75-1
OCTOBER 15, 1976

EDWARD MAHER, ET AL.,
DEFENDANT

ANSWER TO AMENDED COMPLAINT

I.

1. Paragraphs 25, 27, 38, and 39 of the plaintiff's amended complaint are admitted.

2. Paragraphs 1, 2, 3, 5, 8, 31, 32, 33, 34, 37, 40, 43, 44, 45, and 46 set forth conclusions of law and not allegations of fact and therefore no answer is necessary; but, insofar as an answer may be required, the defendant denies each and every allegation of fact and conclusion of law that may be contained therein.

3. Paragraphs 4, 7, 19, 20, 22, 23, 26, 30, 35, 36, 41, and 42 are denied.

4. Defendant is without sufficient information and knowledge with which to determine the truth of the allegations contained in paragraphs 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 24, 28, and 29.

5. All allegations not expressly hereinbefore admitted, denied or modified are denied.

II.

Defendant Respectfully submits the following by way of affirmative defense.

1. The complaint fails to state a claim upon which relief may be granted.

2. This Court lacks jurisdiction over the subject matter of this complaint.

THE DEFENDANT

BY ITS ATTORNEY
CARL R. AJELLO
Attorney General

By: EDMUND C. WALSH
Assistant Attorney General

90 Brainard Road
Hartford, Connecticut 06114
Tel.: 566-7014

18.

United States District Court

District of Connecticut

VIRGINIA GAGNE, individually,
and on behalf of all others
similarly situated,
PLAINTIFF

vs. CIVIL NO. H75-1

EDWARD MAHER, ET AL.
DEFENDANTS.

CONSENT DECREE

It is hereby ordered this 2nd day of March 1977, that:

1. Judgment may enter in accordance with the provisions of this agreement. Nothing in this Consent Decree is intended to constitute an admission of fault by either party to this action.

2. In determining the availability of income and resources for working AFDC recipients, the defendants agree that they shall take into consideration any expenses reasonably attributable to the earning of income.

3. The defendants agree to publish the heretofore unpublished current day care expense standards. Any other unpublished standard allowance or allowances used by the Department for work-related expenses shall be based upon an evaluation of current prices available in the locality in which the recipient requesting the allowance resides.

4. The defendants agree that any standard allowance or

allowances established by the Department, whether published or unpublished, for specific items of expense which are reasonably attributable to the earning of income, are not maximum amounts allowed. Working AFDC recipients will be allowed to prove that they incur expenses which are reasonably attributable to the earning of income which are in excess of, or different from, the Department's standard allowance, and upon presentation of such proof to the Department, such actually incurred expense will be allowed.

5. The defendants agree that all standard allowances established by the Department for expenses which are reasonably attributable to the earning of income, by AFDC recipients shall be reviewed annually to determine the currency of their relationship to the cost of living. In the annual report, required by §17-2 of the Connecticut General Statutes, in which the Commissioner of Social Services is required to at least annually compute a redetermination and such revisions to all components of the standards of need for the several programs administered by the Department so as to reflect changes in living costs using the current federal Regional Consumer Price Index, a current computation for all work-related expense standards will be separately included. Where such standards are found to be not reasonably priced, the Commissioner shall so inform the appropriate committee of the General Assembly.

6. The class of persons the plaintiff is seeking to represent shall be certified to include all AFDC recipients in the State of Connecticut who have or claim to have expenses which are reasonably attributable to the earning of income.

7. The defendant agrees that the work-related transportation allowance specified at Connecticut Department of Social Services Policy Manual, Volume I, Chapter III at Index 332.31, 2b(2) and (3) shall be increased, from $.06 per mile to $.12 per mile.

8. The defendant shall automatically increase the aforesaid transportation allowance for all working AFDC recipients who incur the work-related transportation expense listed in said Policy Manual in Index 332.31, 2b(2) and (3), effective March 1, 1977. It shall be implemented as follows:

(a) For all new applicants, after March 1, 1977, the $.12 per mile allowance will be granted immediately.

(b) For currently employed AFDC recipients who are now receiving the $.06 per mile allowance, the increased allowance will be implemented at the time of such recipient's next scheduled or unscheduled case review whichever occurs first, but in no event later than June 1, 1977. A retroactive adjustment to March 1, 1977, will be made for such a recipient by issuing to him or her a separate check in the amount of $.06 a mile or such other greater amount per mile as the recipient was found to be entitled for each mile of travel, from March 1, 1977, to the date of such case review.

9. The Department of Social Services shall mail the Notice attached to this stipulation as exhibit "A" to all AFDC recipients no later than April 1, 1977, and this form will also be mailed to each recipient who is working or is planning to become employed before any and all scheduled face-to-face interviews.

10. At each face-to-face interview, the interviewing worker shall clearly advise each working welfare recipient, that, in determining the availability of income and resources, for purposes of computing the recipient's award, income equal to expenses reasonably attributable to the earning of income will *not* be included as income to such recipient and will be

disregarded by the Department. The interviewing worker will further explain that, although the Department of Social Services has adopted certain standard allowances, recipients may claim expenses greater than or different from those standards if it can be demonstrated that such expenses are reasonably attributable to the earning of income.

11. After each face-to-face interview, the notice attached hereto as exhibit "B" shall be completed and mailed to the recipient. This notice shall be in addition to and not in lieu of any other notice heretofore required by law.

12. If the working AFDC recipient disagrees with the kind and/or amount of work-related expense allowances allowed, or the computation thereof, he or she may request a fair hearing to challenge the Department's decision. Any decision that would result in the suspension, reduction or discontinuance of public assistance shall be stayed if any evidentiary hearing is requested in writing by the recipient and returned to the Department within ten days of the date of notice.

13. The Department shall modify its regulations and policy to the extent necessary to make them consistent with this stipulation.

14. All notices required by this stipulation shall be printed in both English and Spanish.

JOAN E. PILVER
Counsel for Plaintiff
525 Main Street
Hartford, Connecticut
06103
Tel. (203) 566-6360

DEFENDANT, EDWARD W. MAHER
Commissioner of Social Services
State of Connecticut

DAVID C. SHAW
Counsel for Plaintiff
525 Main Street
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06103
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EDMUND C. WALSH
Counsel for Defendant
90 Brainard Road
Hartford, Connecticut 06103
Tel. (203) 566-7014

PAUL M. SHAPIRO
Counsel for Defendant
90 Brainard Raod
Hartford, Connecticut
06103
Tel. (203) 566-7014

SO ORDERED:

T. EMMET CLARIE, CHIEF
United States District Judge

EXHIBIT "A"

NOTICE TO ALL EMPLOYED AND SOON TO BE EMPLOYED AFDC RECIPIENTS:

Federal law requires that, before the Department of Social Services determines the amount of your welfare award check, it must first allow you to keep the first $30.00 of your gross earned income plus one-third (⅓) of the remainder and then to deduct from your earned income all of your work-related expenses which are reasonably related to the earning of such income.

Expenses such as those incurred for transportation to and from work, or any other work-related expenses which are reasonably related to the earning of your income may be claimed, together with all mandatory payroll deductions. (The cost of providing the necessary care for your child or children while you are at work will be paid by separate check.)

If you have such expenses and believe they have not been fully or properly considered by the Department in determining the amount of your present award, please contact your District Office of the Department of Social Services.

You must be prepared to prove such expenses by producing receipts, sales slips or other evidence of your claims.

EXHIBIT "B"

SUMMARY OF EARNINGS AND WORK-RELATED EXPENSES

Your AFDC award has been (increased) (decreased) (left unchanged) from _____ to _____
effective _____
because _____
Below is the computation of your expenses reasonably attributable to earning of income. These expenses have been exempted in determining your AFDC award. Your gross monthly income was based on the average weekly earnings of the weeks in which you worked during the past 13 weeks. If you have just started work, your gross income will be projected on your anticipated earnings.

We subtracted from your gross income:

(a) Work Incentive Given You By Law _____/mo.

(b) Income Tax Deduction _____/mo.

(c) FICA Deduction _____/mo.

(d) Other Mandatory Deductions

_____

_____ _____/mo.

(e) Work-related Expenses

(i) Public Transportation _____/mo.

(ii) Private Transportation Allowance
_____ miles at _____ per mile. _____/mo.

(iii) Lunch Allowances _____/mo.

(iv) Mandatory Uniform Allowance _____/mo.

(v) Required Protective
Work Clothing _____/mo.

(vi) Other Expenses

_____

_____

_____ _____/mo.

Total Work Expenses _____/mo.

Your total work expenses of _____ have been exempted from your gross income of _____ to determine the amount of your income that will be applied toward your AFDC award.

Day Care allowance, if any, will be issued in a separate check on a monthly basis at the rate of _____/mo.

Exception — When children are in certain Day Care Centers, payments will be made as charged directly to the Day Care Center.

IF YOU DISAGREE WITH THE KIND AND/OR AMOUNT OF WORK EXPENSES, DAY CARE ALLOWANCE OR INCOME FIGURES SHOWN ABOVE, YOU MAY REQUEST AN EVIDENTIARY AND/OR A FAIR HEARING. (SEE ATTACHED FORM.)

Recipient: _____ Worker: _____

Case Number: _____ Date Mailed: _____

19.

United States District Court

District of Connecticut

VIRGINIA GAGNE, Individually
and on behalf of all others
similarly situated

vs. Civil No. H-75-1

EDWARD MAHER, COMMISSIONER OF
SOCIAL SERVICES, et al

RULING ON MOTION FOR ATTORNEYS' FEES

The plaintiff, having entered into a stipulated judgment with the defendant Commissioner of the Connecticut Department of Social Services, now seeks an award of attorneys' fees under the provisions of 42 U.S.C. § 1988. The defendant opposes such an award on the following grounds: (1) that the Eleventh Amendment bars an award of attorneys' fees which will be paid out of the State treasury; (2) that the plaintiff is not entitled to an attorney's fee, since the case was terminated by consent decree rather than by a formal order of court; and (3) that 42 U.S.C. § 1988 does not permit an award of attorneys' fees where the defect in the state law is an inconsistency with a federal *statute*, rather than with the federal *Constitution*. The Court rejects each of these arguments, and holds that the plaintiffs' attorneys are entitled to a fee award.

The Court finds $45 to be a reasonable hourly rate. This rate, applied to the total of 95⅛ allowable hours worked by the plaintiff's attorneys, would yield a total fee of $4,303.13. However, the Court has decided to reduce this figure by 30%, in recognition of the fact that 30% of the budget of the plaintiff's

attorneys' legal aid office is federal money distributed by the Connecticut Department of Social Services. Consequently, the Court finds to be fair and reasonable a total attorney's fee of $3,012.19.

Factual Background

The plaintiff Virginia Gagne instituted this § 1983 class action with a complaint filed on January 3, 1975, wherein she alleged that the Connecticut Department of Social Services (hereinafter "the defendant") was calculating welfare benefits for working AFDC recipients in a manner which was contrary to federal statutory and constitutional law. Specifically, the complaint alleged: (1) that contrary to 42 U.S.C. § 602(a)(7) and 45 C.F.R. § 233.20(a)(iv)(3), was including certain work-related expenses when it calculated the amount of money available to a welfare recipient; (2) that the defendant denied procedural due process to working AFDC recipients by failing to adopt procedures reasonably calculated to inform them as to whether their claims for work-related expenses were being denied or granted and by failing to inform them of their right to challenge adverse determinations in an evidentiary hearing; and (3) that the defendant's maintenance of standard work expense allowances were so arbitrary and unreasonable as to deprive working AFDC recipients of substantive due process.

After discovery and negotiations the parties entered into a consent decree, which was approved by the Court on March 2, 1977. The consent decree gave the plaintiff, as well as the class she represented, virtually all the relief sought in the complaint. Under the terms of the consent decree the defendant agreed to: permit working AFDC recipients to prove that they incur work-related expenses which are in excess of the standard allowance established by the defendant; conduct an annual review for the purpose of updating the standard allowances; publish heretofore unpublished standard allowances; double the standard transportation allowance from $.06 to $.12 per mile; provide written notice to working AFDC recipients of the

precise amount of work-related expenses which are to be allowed as to each recipient; provide written notice of the AFDC recipients' right to an evidentiary hearing in the event that the recipient disagrees with the defendant's calculation of work-related expenses; and stay any reduction in AFDC benefits if the recipient requests an evidentiary hearing within ten days of receiving the aforesaid written notice.

Discussion of the Law

The Civil Rights Attorney's Fees Awards Act of 1976[1] is applicable to cases, such as the present one, which were pending on the effective date of the Act. *Beazer v. New York City Transit Authority*, 558 F.2d 97, 100 (2d Cir. 1977). The defendant argues that the Eleventh Amendment bars any award of an attorney's fee, which will be paid out of the State treasury. This argument is foreclosed by the recent holding of the Supreme Court that the Civil Rights Attorney's Fees Awards Act of 1976 may be utilized to obtain an attorney's fee award against a State, notwithstanding the strictures of the Eleventh Amendment. *Hutto v. Finney*, _____ U.S. _____, Docket No. 76-1660 at pp. 13-18 (June 23, 1978). The rationale of that case was that the attorney's fee award has only an "ancillary" effect on the State treasury, and therefore the award does not offend the Eleventh Amendment. Moreover, Congress may abrogate the States' Elevent Amendment immunity when it is acting pursuant to § 5 of the Fourteenth Amendment, *see Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976), and it is clear from the legislative history that the Civil Rights Attorney's Fees Awards Act of

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[1]That statute, which has been codified in 42 U.S.C. § 1988, reads:

> "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 or in any civil action or proceeding, by or on behalf of the United States of America, to enforce, or charging a violation of, a provision of the United States Internal Revenue Code, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.
>
> As amended Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641."

1976 was enacted pursuant to § 5 of the Fourteenth Amendment. *See* S. Rep. No. 94,1011, p.5 (1976); H.R. Rep. No. 94-1558, p.7 (1976). Thus the Eleventh Amendment does not bar the award of an attorney's fee against the defendant in this case.

The defendant contends that the plaintiff is not a "prevailing party" who is entitled to an attorney's fee under the terms of the Act, since the case was terminated by a consent decree rather than by an order of court. The legislative history of the Act is very explicit on this point. "Moreover, for purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief." S. Rep. 94-1011, p.5 (1976). The same Senate report cites with approval *Kopet v. Esquire Realty Co.*, 523 F.2d 1005, 1008 (2d Cir. 1975), where the court held that "federal courts may award counsel fees based on benefits resulting from litigation efforts even where adjudication on the merits is never reached, e.g., after a settlement."

The defendant urges that awarding an attorney's fee in this case would frustrate attempts to settle cases, in that defendants would litigate in order to avoid paying an attorney's fee. This argument cuts with at least equal force in the other direction, however, because plaintiffs who thought they would be deprived of an attorney's fee unless a case was adjudicated on the merits would likewise be reluctant to settle, even in instances where the defendant offered them full relief in the consent decree. Other courts, agreeing with this analysis, have held that the 1976 amendment to 42 U.S.C. § 1988 permits the award of an attorney's fee in spite of the fact that the case is disposed of without final adjudication on the merits. *See Brown v. Culpepper*, 559 F.2d 274, 276-277 (5th Cir. 1977); *Howard v. Phelps*, 443 F.Supp. 374, 376-377 (E.D. La. 1978); *Buckton v. National Collegiate Athletic Association*, 436 F. Supp. 1258, 1264-1265 (D. Mass. 1977).

The fact that the plaintiff in this case did not receive all the relief originally requested in her complaint also does not preclude recovery of an attorney's fee. The Senate report on the bill notes that an attorney's fee award is "appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on all the issues." S. Rep. No. 94-1011, p.5 (1976). As noted previously the plaintiff in this case received, through the consent decree, substantially all of the relief originally sought in her complaint; thus she is entitled to an attorney's fee even though she did not prevail in every particular.

The defendant further argues that the Civil Rights Attorney's Fees Awards Act of 1976 does not permit an attorney's fee award in this case, because the defect in the state law is an inconsistency with a federal *statute*, rather than with the federal *Constitution*. It is true that there is no federal court jurisdiction, under 42 U.S.C. § 1343(3) or § 1343(4), to entertain a § 1983 claim which is based only on statutory, rather than constitutional, grounds. *Andrews v. Maher*, 525 F.2d 113, 118-120 (2d Cir. 1975). However, where the § 1983 complaint states both statutory and constitutional claims, 42 U.S.C. § 1343(3) confers jurisdiction on the federal court to hear the constitutional claim. Then, so long as the constitutional claim is of sufficient substance to support federal jurisdiction, the federal court may decide the statutory claim as a matter of pendent jurisdiction and avoid ultimate decision on the constitutional claim. *Hagans v. Lavine*, 415 U.S. 528, 536 (1974). Under the *Hagans* doctrine, this Court would have had jurisdiction over the case, and could have decided the statutory claim without reaching the constitutional issue, as long as the Court first found that the constitutional issue was not "obviously frivolous," "wholly insubstantial," or "so attenuated and unsubstantial as to be absolutely devoid of merit." *Id.* at 536-537.

If the instant case were now before the Court on a motion to dismiss, the Court would rule as a matter of law that there is federal jurisdiction. The complaint raises several constitutional

issues which are "substantial" within the meaning of *Hagans v. Lavine*, to wit: whether an impermissible distinction had been created between those working welfare recipients whose work-related expenses were fully considered in the computation of AFDC awards and those whose work-related expenses were not fully considered, in violation of the equal protection clause; whether the defendant, by creating a table of standard allowances, which could not be challenged in individual cases, set up an irrebuttable presumption with respect to work-related expenses, in violation of the due process clause; and whether the failure to provide written notice of the opportunity for an evidentiary hearing, if the welfare recipient disputed the defendant's calculation of work-related expenses, violated the due process clause.

Since there would be federal jurisdiction to hear this case, the fact that the Court, if it had been called upon to rule on the merits of the case, would have decided it on statutory grounds, is no reason to deny the plaintiff an attorney's fee. As was said where an attorney's fee was awarded pursuant to 42 U.S.C. § 1988 in a case similar to the one at bar:

> "[I]t seems manifestly unfair to penalize plaintiffs who couple their constitutional claims with meritorious statutory claims and thereby facilitate the federal policy of avoiding unnecessary constitutional decisions. To deny such plaintiffs the attorneys' fees to which they might otherwise be entitled frustrates rather than promotes the policy of the Act." *Southeast Legal Defense Group v. Adams*, 436 F.Supp. 891, 895 (D. Oregon 1977).

Having determined that the plaintiff is entitled to an attorney's fee, the Court must determine how much the award should be. This Court has recently held that the most important factors to be considered in calculating an award for attorneys' fees are the time and labor expended, counsels' experience and reputation, the magnitude and complexity of the litigation, the

amount recovered, the attorneys' "risks of litigation," and awards in similar cases. *Fitzpatrick v. Bitzer*, Civil No. 15,492 (July 12, 1978). The plaintiff was represented in this case by the Legal Aid Society of Hartford County, Inc., and she was not required to pay for the services rendered. Affidavits submitted by the plaintiff's two attorneys, Joan E. Pilver and David C. Shaw, indicate that at the time the suit was instituted they each had a little more than two years' experience at the Bar. Shaw spent a total of 149½ hours on the case, while Pilver spent 99¾ hours. Affidavits submitted by two other Hartford attorneys disclose that the customary fee in the Hartford area for lawyers with three years of experience is $45 per hour. Considering all the factors in this case, including the fact that there was never an evidentiary trial and that the aggregate in-court time for both attorneys was 5½ hours, the Court finds the hourly rate of $45 to be fair and reasonable.

Before applying this rate to the number of hours claimed by Pilver and Shaw, it is necessary to subtract the number of hours which were devoted to seeking an award of attorneys' fees, because those hours were spent solely for the attorneys' benefit and did not benefit the plaintiffs. *See City of Detroit v. Grinnell Corp.*, 560 F.2d 1093, 1102 (2d Cir. 1977); *Lindy Bros. Builders, Inc. v. American Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 111 (3d Cir. 1976). While those cases arose in contexts other than an award under 42 U.S.C. § 1988, at least one other court has held that the same reasoning applies in applications for attorneys' fees under the civil rights statutes. *Commonwealth of Pennsylvania v. O'Neill*, 431 F.Supp. 700, 705 (E.D. Pa. 1977). Pilver spent 15½ hours working on the attorneys' fee application and Shaw spent 42½ hours. Substracting these hours from the total claimed by the attorneys leaves 84¼ hours for Pilver and 107½ hours for Shaw, for a total of 191¼ hours.

The Court has decided to disallow one half of the hours worked, for the reason that the issues involved in the case were relatively simple and most attorneys would not have spent so

many hours on the case. The plaintiffs' attorneys themselves concede that the case was not a complex one.

> "The law is unmistakenly [*sic*] clear. The Supreme Court in *Shea v. Vialpando*, [416 U.S. 251 (1974)] held that the incentive earnings provisions of the Social Security Act required state agencies to disregard a working welfare recipient's earned income equivalent to all his or her reasonable work related expenses." (footnote omitted). Brief in Support of Plaintiff's Motion for Attorney's Fees at 10.

Computing the 95⅛ allowable hours at $45 per hour would yield a total of $4,303.13. By way of comparison, this Court recently awarded $6,275 for services at the District Court level in a case where the legal theory advanced by the plaintiff was a novel one and the plaintiff's attorney had a great deal more experience than the present attorneys. *Fitzpatrick v. Bitzer*, Civil No. 15,942 (July 12, 1978).

This $4,303.13 figure must be further reduced by 30%, which is the percentage of the budget of the plaintiff's attorneys that is distributed, out of Title XX funds, by the defendant. Title XX of the Social Security Act, 42 U.S.C. § 1937 *et seq.*, is a program wherein federal money is distributed by state agencies for programs designed to benefit the economically disadvantaged. The Department of Social Services, which is the single agency designated by the Governor of Connecticut to administer the State's Title XX program, has considerable discretion in determining how funds will be allocated. An affidavit filed by the Executive Director of the Legal Aid Society of Hartford County, Inc., discloses that the Legal Aid Society had a budget of $131,379 in 1975, $203,771 in 1976, and $233,493 in 1977. During those same years the Legal Aid Society received Title XX funding in the amounts of $37,157, $32,390, and $100,498. Thus, during the years in which this lawsuit was

pending, the Legal Aid Society received approximately 30% of its funding from Title XX.

An award of attorneys' fees is not precluded either by the fact that the plaintiff was not required to pay her counsel, *Jordan v. Fusari*, 496 F.2d 646, 649 (2d Cir. 1974), or by the fact that the plaintiff's attorneys are publicly-funded. *Torres v. Sachs*, 538 F.2d 10, 11-12 (2d Cir. 1976). Nonetheless, "it is appropriate for the district court . . . to consider the factor of federal funding in its computation of a discretionary attorney's fee award." *EEOC v. Enterprise Ass'n Steamfitters*, 542 F.2d 579, 593 n. 13 (2d Cir. 1976), *cert. den.* 430 U.S. 911 (1977). This factor is particularly relevant in this case, in that not only did the plaintiff's attorneys receive federal funding but that funding was distributed by the very defendant from whom the plaintiff now seeks to collect an attorney's fee.

This Court, in exercising its discretion, is of the opinion that the award should be reduced to reflect the public contribution of federal funds to the plaintiff's attorneys. The purpose of the Civil Rights Attorney's Fees Awards Act of 1976 is to encourage the institution of meritorious lawsuits which, due to economic considerations, would not be brought if an attorney's fee could not be assessed against the defendant. In the instant case the defendant has already done its part to encourage such lawsuits by distributing federal money to the Legal Aid Society of Hartford County, Inc. Failing to take this factor into account when awarding an attorney's fee would be to force the defendant to pay twice for the same legal services. Therefore, the initial figure of $4,303.13 will be reduced by 30%.

Accordingly, the total award for attorneys' fees in this case shall be $3,012.19. SO ORDERED.

Dated at Hartford, Connecticut, this 1st day of August, 1978.

T. EMMET CLARIE
Chief Judge

Supreme Court of the United States

— No. 78-1888 —

EDWARD W. MAHER, ETC.,

Petitioner,

v.

VIRGINIA GAGNE, ETC.

ORDER ALLOWING CERTIORARI. Filed October 1, 1979

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted.

Supreme Court of the United States

— No. 78-1888 —

EDWARD W. MAHER, ETC.,

Petitioner,

v.

VIRGINIA GAGNE, ETC.

ON CONSIDERATION of the motion of the respondent for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 1, 1979